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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte KEEGAN SAUNDERS O'DONNELL

Appeal 2018-003842
Application 14/467,549
Technology Center 2800

Before BEVERLY A. FRANKLIN, GEORGE C. BEST, and
MERRELL C. CASHION, JR., *Administrative Patent Judges*.

CASHION, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant¹ appeals under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–20. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ General Electric Company is the Applicant/Appellant. Appellant does not identify a real party in interest. *See generally* App. Br. Therefore, we assume the real party in interest is the inventor. 37 C.F.R. § 41.37(c)(i).

STATEMENT OF THE CASE

Claim 1 is illustrative of the subject matter on appeal and is reproduced below:

1. A system comprising:

an oil sensor system for sampling a lubrication oil from a transportation machine coupled with an oil reservoir, the oil sensor system including a housing having: an oil intake conduit connected with the oil reservoir and configured to extract oil from the oil reservoir, and an oil analyzer configured to measure a characteristic of the lubrication oil extracted from the oil reservoir; and

at least one computing device coupled with the oil sensor system, the at least one computing device configured to monitor the lubrication oil from the transportation machine by performing actions including:

determining an initial ideal remaining life for the lubrication oil from the transportation machine;

determining a temperature-based remaining life for the lubrication oil based upon a temperature measurement of the lubrication oil;

calculating a contamination factor of the lubrication oil based upon a contamination sample of the lubrication oil from the oil sensor system;

determining an updated ideal life remaining for the lubrication oil based upon the contamination factor, the initial ideal remaining life, and the temperature-based remaining life; and

determining an actual life remaining for the lubrication oil based upon the updated ideal life remaining and a life loss factor.

Independent claim 17, also directed to a system, differs from claim 1 in that it requires the at least one computing device to perform some different action steps. Independent claim 10 is directed to non-transitory computer-readable medium comprising a computer program

product having program code stored thereon, which essentially performs the action steps of claim 1 when executed by at least one computing device.

REJECTIONS

Appellant requests review of the Examiner's final decision to reject claims 1–20 under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter (i.e., an abstract idea) without significantly more. Final Act. 4; App. Br. 6.

In addition, the Examiner maintains the following obviousness-type double patenting rejections of claims 1–20:

a. under nonstatutory obviousness-type double patenting as unpatentable over claims 1–16 of O'Donnell (US 9,354,221 B2, issued May 31, 2016) in view of Blossfeld (US 8,482,420 B2, issued July 9, 2013) and Song (US 2006/0169031 A1, published August 3, 2006); and

b. under provisional nonstatutory obviousness-type double patenting as unpatentable respectively over claims 1–20 of copending Application No. 14/467,526; claims 1–20 of copending Application No. 14/467,538; claims 1–20 of copending Application No. 14/467,534; claims 1–20 of copending Application No. 14/467,555; and claims 1–20 of copending Application No. 14/467,566 in view of Blossfeld and Song.

Final Act. 3–4; Ans. 19–20.

ANALYSIS

Rejection under 35 U.S.C. § 101 (ineligible subject matter)

An invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101.

However, the Supreme Court has long interpreted 35 U.S.C. § 101 to include

implicit exceptions: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *E.g.*, *Alice Corp. 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 182 n.7 (quoting *Corning v. Burden*, 56 U.S. 252, 267–68 (1854)); and manufacturing flour, *Benson*, 409 U.S. at 69 (citing *Cochrane v. Deener*, 94 U.S. 780, 785 (1876)).

In *Diehr*, the claim at issue recited a mathematical formula, but the Supreme Court held that “[a] claim drawn to subject matter otherwise

statutory does not become nonstatutory simply because it uses a mathematical formula.” *Diehr*, 450 U.S. at 187; *see also id.* at 191 (“We view respondents’ claims as nothing more than a process for molding rubber products and not as an attempt to patent a mathematical formula.”). Having said that, the Supreme Court also indicated that a claim “seeking patent protection for that formula in the abstract . . . is not accorded the protection of our patent laws, and this principle cannot be circumvented by attempting to limit the use of the formula to a particular technological environment.” *Id.* (internal citation omitted) (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 (citation 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.* (alterations in original) (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 35 U.S.C. § 101, the 2019 Revised Patent Subject Matter Eligibility

Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) (the “Guidance”).² Under the 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), (designated as Step 2A (Prong 1) in the Guidance); and

(2) additional elements that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h)) (designated as Step 2A (Prong 2) in the Guidance).

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 are 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 (designated as Step 2B in the Guidance).

Step 2A (Prong 1) and Step 2A (Prong 2) are used for the analysis under the first step of *Alice*, while Step 2B informs the analysis under the second step of *Alice*.

² We note that the Guidance was not available to the Examiner during the prosecution of the instant Application.

Determination of Claims' Statutory Category

Before any consideration as to whether a claim is directed to a patent ineligible subject matter, such as an abstract idea, we must first determine if the claim falls under a statutory category, a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101.

There appears to be no dispute between Appellant and the Examiner that the claims fall under a statutory category under 35 U.S.C. § 101.

For completeness, we note that independent claims 1, 17, and their respective dependent claims are system claims. Appellant asserts that these claims comprise physical systems or components such as an oil sensor system and computing device. *See, e.g.*, App. Br. 10–11. The Examiner does not contest this assertion. *See generally* Final Act. and Ans. Therefore, we interpret claims 1, 17, and their respective dependent claims as falling under the statutory category of “machine,” i.e. a structure that can be termed a machine under 35 U.S.C. § 101.

On the other hand, independent claim 10 and its dependent claims recite a computer readable medium, which the Specification describes as “one or more portable storage articles of manufacture; one or more memory/storage components of a computing device; paper; etc.” Spec. ¶ 53. Manufactures are articles that result from the process of manufacturing, i.e., they were produced “from raw or prepared materials by giving to these materials new forms, qualities, properties, or combinations, whether by hand-labor or by machinery.” *Samsung Elecs. Co. v. Apple Inc.*, 137 S. Ct. 429, 435 (2016) (quoting *Diamond v. Chakrabarty*, 447 U. S. 303, 308, (1980)); *In re Nuijten*, 500 F.3d 1346, 1356–57 (Fed. Cir. 2007). Manufactures also include “the parts of a machine considered separately

from the machine itself.” *Samsung Elecs.*, 137 S. Ct. at 435 (quoting 1 W. Robinson, *The Law of Patents for Useful Inventions* § 183, p. 270 (1890)). Therefore, we interpret claim 10 and its dependent claims as falling under the statutory category of “manufacture” under 35 U.S.C. § 101.

Having established that the claims fall in a statutory category, we now proceed to analyze the claims to determine if they are directed to a patent ineligible subject matter following the Guidance.

Determination of Patent Subject Matter Eligibility

Independent claims 1 and 17 (system claims)

a. *Alice* Step 1 (Office Revised Step 2A (Prong 1))

The Examiner determined that the subject matter of independent claims 1 and 17 are directed to an abstract idea. Ans. 2–4, 19.

Under Step 2A (Prong 1) of the Guidance, we must first determine whether the claims include any limitations that fall within the subject matter groupings of abstract ideas enumerated in Section I of the Guidance. Guidance, 84 Fed. Reg. at 51–54.

As the Examiner notes,³ independent claim 1 comprises an oil sensor system and at least one computing device and also includes the following limitations:

determining an initial ideal remaining life for the lubrication oil from the transportation machine;

³ We disagree with Appellant’s assertion that grouping limitations that may be directed to an abstract idea skirts the analysis of each and every feature of the claim. App. Br. 12. The identification of limitations that may be directed to an abstract idea is a necessary step to “first determine whether the claims at issue are directed to a patent-ineligible concept.” *Alice*, 573 U.S. at 218.

determining a temperature-based remaining life for the lubrication oil based upon a temperature measurement of the lubrication oil;

calculating a contamination factor of the lubrication oil based upon a contamination sample of the lubrication oil from the oil sensor system;

determining an updated ideal life remaining for the lubrication oil based upon the contamination factor, the initial ideal remaining life, and the temperature-based remaining life; and

determining an actual life remaining for the lubrication oil based upon the updated ideal life remaining and a life loss factor.

Ans. 2–3.

Like claim 1, claim 17 recites a system that comprises an oil sensor system and at least one computing device and also includes the following limitations:

predicting an initial ideal remaining life for the lubrication oil from the transportation machine;

determining a temperature-based remaining life of the lubrication oil based upon a measured temperature of the lubrication oil;

determining a contamination factor of the lubrication oil based upon a measured contaminant level of the lubrication oil from the oil sensor system;

determining a life loss factor of the lubrication oil based upon the initial ideal remaining life, the temperature-based remaining life, and the contamination factor;

determining an amount of life lost from the lubrication oil based upon the life loss factor and a sampled frequency of the lubrication oil;

calculating a refined ideal remaining life for the lubrication oil based upon the amount of life lost and the initial ideal remaining life; and

predicting an actual remaining life of the lubrication oil based upon the refined ideal remaining life and the life loss factor.

Even though the limitations for the actions to be performed in system claims 1 and 17 by the at least one computing device are different, we address these claims together because the patent subject matter eligibility analysis for both claims is the same. *See* Ans. 19.

Claims 1 and 17 recite various determining steps and a calculating step. Claim 17 additionally recites various predicting steps. Under their broadest reasonable interpretation, these steps, as drafted, are processes that cover performance of the limitations in the mind but for the recitation of generic computing device. That is, other than reciting “the at least one computing device,” nothing in the claims precludes each step from practically being performed in the human mind. For example, but for “the at least one computing device” language, the claims encompass the user manually calculating an actual life remaining for the lubrication oil based upon the updated ideal life remaining and a life loss factor from temperature observations. The mere nominal recitation of a generic computing device does not take the claim limitations out of the mental processes grouping.

Thus, claims 1 and 17 recite a mental process. Therefore, we agree with the Examiner’s overall determination that claims 1 and 17 are directed to an abstract idea. Ans. 3–4.

We understand that the Examiner evaluated independent claims 1 and 17 as broadly encompassing the abstract idea of a mathematical concept in view of the mathematical formulae and/or relationships recited in dependent claims 2–7, 9, and 20. *See* Ans. 2–4. However, under the Guidance, claims 1 and 17 are best described as being directed to mental processes given that they do not explicitly recite a mathematical concept.

b. *Alice* Step 1 (Office Revised Step 2A (Prong 2))⁴

Having determined that the subject matter of claims 1 and 17 are directed to an abstract idea, we now consider under Step 2A (Prong 2) of the Guidance whether each claim as a whole integrates the recited judicial exception into a practical application of the exception. Guidance, 84 Fed. Reg. at 54. “A claim that integrates a judicial exception into a practical application will 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.” *Id.*

Independent claims 1 and 17 recite an oil sensor system and at least one computing device. These additional elements do not recite a specific use for the determined actual life remaining for the lubrication oil to provide a specific improvement over prior systems and only add insignificant extra-solution activity to the judicial exception. That is, the additional elements do not 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.

Appellant asserts that the claimed invention improves the technology relating to computers. App. Br. 12. Appellant cites to paragraphs 3–5, 18, and 19 of the Specification to support the assertion that the invention improves the technology relating to computers. *Id.* at 13. We have

⁴ 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 generally* Guidance, 84 Fed. Reg. 50.

reviewed the noted portions of the Specification and find no support for the stated assertion. The cited portions of the Specification primarily provide an overview of the state of the art and do not adequately discuss a specific improvement of technology related to computers. Moreover, Appellant does not address the reference to Song relied upon by the Examiner, which discloses an oil monitoring system comprising an oil sensor system and a computing device (Song Figure 1 and ¶¶ 10–11). Appellant does not explain how the claimed invention is an improvement over Song’s system.

Appellant additionally argues that there is no preemption, because the claims are directed to approaches for determining lubrication oil quality which includes various specific processes in operational order. App. Br. 13–14.

While preemption may signal patent ineligible subject matter, “the absence of complete preemption does not demonstrate patent eligibility.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015); *see also OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015) (“[T]hat the claims do not preempt all price optimization or may be limited to price optimization in the e-commerce setting do not make them any less abstract.”). And, “[w]here a patent’s claims are deemed only to disclose patent ineligible subject matter under the *Mayo* framework, as they are in this case, preemption concerns are fully addressed and made moot.” *Ariosa*, 788 F.3d at 1379.

We, thus, find nothing in the claims which goes beyond the abstract idea to transform the claim into eligible subject matter. Therefore, each claim as a whole does not integrate the mental process into a practical application.

c. *Alice* Step 2 (Office Step 2B)

We next determine whether additional elements recited in the claims provide “significantly more” than the recited judicial exception. That is, whether additional elements provide an inventive concept. Our consideration includes whether the additional elements represent well understood, routine, and conventional activity.

As noted above, independent claims 1 and 17 recite an oil sensor system and at least one computing device.

We agree with the Examiner that Song establishes the claimed oil sensor system and its use to measure a characteristic of the lubrication oil extracted from the oil reservoir as a well understood, routine, conventional activity, Ans. 4; *see* Song Figure 1 (element 5) and ¶¶ 2, 6, 10.

We also agree with the Examiner’s determination that the claimed computing device is a well understood, routine and conventional activity. Ans. 4; Final Act. 6–7. Further, courts have recognized the performance of repetitive calculations by a computer as a well understood, routine, conventional activity. *Flook*, 437 U.S. at 594 (recomputing or readjusting alarm limit values); *Bancorp Servs. L.L.C. v. Sun Life Assurance Co.*, 687 F.3d 1266, 1278 (Fed. Cir. 2012) (“The computer required by some of Bancorp’s claims is employed only for its most basic function, the performance of repetitive calculations, and as such does not impose meaningful limits on the scope of those claims.”).

Appellant appears to argue that the claimed oil sensor system is not conventional because of the individually claimed components that form the oil sensor system. App. Br. 8–9. We find this argument unavailing because Appellant does not address the Examiner’s reliance on Song to establish oil

sensor systems as well understood, routine and conventional. Ans. 4; *see* Song Figure 1 (element 5) and ¶¶ 2, 6, 10. Further, Appellant does not adequately explain how the claimed oil sensor system provides an inventive concept.

With respect to the inconsistency regarding the Examiner’s determinations over the prior art and the patent-ineligible subject matter (App. Br. 13), a novel or nonobvious way of analyzing data would not normally render patent-eligible a claim directed to an oil sensor system and generic computer functioning as they are always expected to. This is so because a finding of novelty or nonobviousness does not necessarily lead to the conclusion that subject matter is patentable eligible. “Groundbreaking, innovative, or even brilliant discovery does not by itself satisfy the § 101 inquiry.” *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 591 (2013). The question in step two of the *Alice* framework is not whether an additional feature [i.e., the calculation] is novel but whether the implementation of the abstract idea involves “more than performance of ‘well-understood, routine, [and] conventional activities previously known to the industry.’” *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat. Ass’n*, 776 F.3d 1343, 1347–48 (Fed. Cir. 2014) (alteration in original) (quoting *Alice*, 573 U.S. at 225). This will depend on whether or not the oil sensor system and computer device are simply acting as a conduit for the data-manipulating abstract idea, as novel/nonobvious as that might be. *Cf. In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d 607, 612 (Fed. Cir. 2016).

Song’s oil monitoring system comprising an oil sensor system and a computing device (Song Figure 1 and ¶¶ 10–11) supports the view that the

claimed the oil sensor system and computing device are merely conduits for the abstract idea of determining an actual life remaining for the lubrication oil based upon other determined parameters.

“Taking the claim elements separately, the function performed by the computer at each step of the process is ‘[p]urely conventional.’” *Alice*, 134 S. Ct. at 2359 (citing *Mayo*, 566 U.S. at 79 (alteration in the original)). *Cf. Alice*, 573 U.S. at 225 (alteration in original) (citing *Mayo*, 566 U.S. at 79) (“Considered ‘as an ordered combination,’ the computer components of petitioner’s method ‘ad[d] nothing . . . that is not already present when the steps are considered separately.’”)

Therefore, the additional elements recited in independent claims 1 and 17 do not provide “significantly more” than the recited judicial exception.

Appellant does not present separate arguments for claims 2–9, all ultimately dependent from claim 1, and for claims 18–20, all ultimately dependent from claim 17. *See generally* App. Br. These claims do not add any limitations that would take them out of the mental processes grouping or add additional elements that integrate the mental process into a practical application or provide an inventive concept for the reasons given above. In fact, claims 2–7, 9, and 20 specify mathematical equations and/or relationships to be used in performing the claimed actions. This leads us to conclude that these claims, in addition to being directed to a mental process, are also directed to the abstract idea of mathematical concepts involving mathematical relationships, mathematical formulas or equations. Based on our analysis above, we also find that these claims, when considered as a whole, do not integrate the mathematical concept into a practical application

nor do they include additional elements that provide “significantly more” than the recited judicial exception.

Independent claim 10

a. *Alice* Step 1 (Office Revised Step 2A (Prong 1))

Independent claim 10 recites a non-transitory computer-readable medium comprising a computer program product having program code stored thereon that, when executed by at least one computing device, causes the at least one computing device to monitor a lubrication oil from a machine by performing actions essentially recited in claim 1. We note that the claim is directed only to a non-transitory computer-readable medium and no additional elements, such as the oil sensor system and the at least one computing device, are positively recited in the claim.

The Examiner determined that the subject matter of independent claim 10 is directed to an abstract idea. Ans. 19.

As previously indicated, claim 10 recites a computer program product having program code stored thereon that causes the at least one computing device to monitor a lubrication oil from a wind turbine by performing actions essentially recited in claim 1. Therefore, claim 10 recites a mental process for the reasons presented above.

b. *Alice* Step 1 (Office Revised Step 2A (Prong 2))

Independent claim 10 is limited to a non-transitory computer-readable medium and, as such, does not positively recite additional elements, such as the oil sensor system and the at least one computing device. Therefore, we find claim 10 as a whole does not integrate the mental process into a

practical application because it lacks additional elements 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.

c. *Alice* Step 2 (Office Step 2B)

Having determined that claim 10 lacks additional elements under Step 2A (Prong 2), it follows that claim 10 also lacks additional elements that provide “significantly more” than the recited judicial exception.

Appellant does not present specific arguments addressing the rejection of claim 10. To the extent that Appellant relies on arguments presented for claims 1 and 17 to address the rejection of claim 10 (*see generally* App. Br.), we have addressed these arguments above.

Appellant also does not present separate arguments for claims 11–16, all ultimately dependent from claim 10. *See generally* App. Br. These claims do not add any limitations that would take these claims out of the mental processes grouping or add additional elements that integrate the mental process into a practical application or provide an inventive concept for the reasons given above. In fact, claims 11 and 13–16 recite mathematical equations/formulae and/or relationships to be used in performing the claimed actions. Thus, similar to some of the claims that depend from claims 1 and 17, we conclude that claims 11 and 13–16, in addition to being directed to a mental process, are also directed to the abstract idea of mathematical concepts involving mathematical relationships, mathematical formulas or equations. Based on our analysis above, we also find that these claims, when considered as a whole, do not integrate the mathematical concept into a practical application nor do they include

additional elements that provide “significantly more” than the recited judicial exception.

Accordingly, we affirm the Examiner’s rejection of claims 1–20 under 35 U.S.C. § 101 for the reasons given above and presented by the Examiner.

Nonstatutory obviousness-type double patenting

The Examiner rejects claims 1–20 on the ground of nonstatutory obviousness-type double patenting as unpatentable over O’Donnell’s claims in view of Blossfeld and Song and on the ground of provisional nonstatutory obviousness-type double patenting as unpatentable over the claims of several copending Applications, each in view of Blossfeld and Song. Final Act. 3–4.

Appellants do not substantively address the nonstatutory double patenting rejection in the Appeal or Reply Briefs. *See* App. Br. 15–16 and Reply Br. 13–14.⁵

Accordingly, we summarily sustain the Examiner’s rejection of claims 1–20 on the grounds of nonstatutory double patenting and provisional nonstatutory double patenting. *See MPEP* § 1205.02 (2017) (“If a ground of rejection stated by the examiner is not addressed in the appellant’s brief, appellant has waived any challenge to that ground of rejection and the Board may summarily sustain it.”); *see also Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential) (“If an appellant fails to present arguments on a particular issue—or more broadly, on a particular rejection—the Board will

⁵ Appellant indicated a willingness to consider filing a terminal disclaimer to address these rejections should any claim be indicated as allowable. App. Br. 16; Reply Br. 14.

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not, as a general matter, unilaterally review those uncontested aspects of the rejection.”).

DECISION

The Examiner’s rejection of claims 1–20 under 35 U.S.C. § 101 is affirmed.

The Examiner’s rejections of claims 1–20 on the grounds of nonstatutory double patenting and provisional nonstatutory double patenting are 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). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED