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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CHRISTOPHER S. JACKSON and
PETER A. JOHNSON

Appeal 2018-004011
Application 14/855,537
Technology Center 2400

Before ST. JOHN COURTENAY III, JENNNIFER S. BISK, and IRVIN E. BRANCH, *Administrative Patent Judges*.

COURTENAY, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant[1] appeals under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–30, which constitute all the claims pending in this application. We have jurisdiction over the pending claims under 35 U.S.C. § 6(b). An Oral Hearing was conducted on October 24, 2019.

We affirm.

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[1] We use the word "Appellant" to refer to Applicant as defined in 37 C.F.R. § 1.42(a). According to Appellant, the real party in interest is the Assignee, Paradigm. App. Br. 1.

STATEMENT OF THE CASE [2]

Disclosed embodiments of Appellant's invention relate "to systems and methods for generating and authenticating credentials, and in particular electronic credentials. Spec. ¶ 3.

Representative Claim

> 1. An electronically implemented method for validating a certified electronic academic credential, the method comprising:
>
> storing, in a validation database, a plurality of certified electronic credential records corresponding to a plurality of certified electronic academic credentials and associated authentication information, each record associated with an authentication information and comprising an academic credential status;
>
> receiving a certified electronic credential validation request and proffered authentication information redirected from [L1] *a credentialer validation portal interface available from a credentialer*;
>
> identifying a certified electronic credential record in the validation database associated with the proffered authentication information;
>
> generating a validation response based on the identified certified electronic credential record;
>
> [L2] *transmitting the validation response to the credentialer validation portal*; and

[2] We herein refer to the Final Office Action, mailed April 11, 2017 ("Final Act."); Appeal Brief, filed Oct. 18, 2017 ("App. Br."); Examiner's Answer, mailed Dec. 8, 2017 ("Ans."); and the Reply Brief, filed Feb. 6, 2018 ("Reply Br.").

> [L3] *displaying validation information based on at least a portion of the validation response at the credentialer validation portal interface*.

App. Br. 16 (Claims Appendix) (emphasis added regarding disputed limitations L1, L2, and L3 under 35 U.S.C. § 103).

Rejections

A. Claims 1–9, 11, 17, 18, 22, 26, 27, 29, and 30 are rejected under 35 U.S.C. § 103 as being obvious over the combined teachings and suggestions of Roberts (US 2014/0090036 A1) ("Roberts"), in view of Ki et al. (US 2004/0187076 Al) ("Ki").

B. Claims 10, 12–16, 19–21, 23–25 and 28 are rejected under 35 U.S.C. § 103 as being obvious over the combined teachings and suggestions of Roberts, Ki, and further in view of Johnson (US 2010/0217988 Al).

Grouping of Claims

Based upon Appellant's arguments, and our discretion under 37 C.F.R. § 41.37(c)(1)(iv), we decide the appeal of §103 Rejection A of claims 1–9, 11, 17–18, 22, 26, 27, 29, and 30 on the basis of representative claim 1. We separately address §103 Rejection B, *infra*.

Issue on Appeal

Issue: Under 35 U.S.C. § 103, did the Examiner err by finding the cited combination of Roberts and Ki would have taught or suggested contested limitations L1, L2, and L3:

> receiving a certified electronic credential validation request and proffered authentication information redirected from [L1] *a credentialer validation portal interface available from a credentialer*;
>
> identifying a certified electronic credential record m the validation database associated with the proffered authentication information;
>
> generating a validation response based on the identified certified electronic credential record;
>
> [L2] *transmitting the validation response to the credentialer validation portal*; and
>
> [L3] *displaying validation information based on at least a portion of the validation response at the credentialer validation portal interface*[,]

within the meaning of independent claim 1?[3] (emphasis added).

ANALYSIS

We have considered all of Appellant's arguments and any evidence presented. We have reviewed Appellant's arguments in the Briefs, the

[3] We give the contested claim limitations the broadest reasonable interpretation ("BRI") consistent with the Specification. *See In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997).

Examiner's obviousness rejections, and the Examiner's responses to Appellant's arguments. On this record, Appellant does not proffer sufficient argument or evidence to persuade us of error regarding the Examiner's underlying factual findings and ultimate legal conclusion of obviousness. In our analysis below, we highlight and address specific findings and arguments for emphasis.

Claim Construction

As an initial matter of claim construction, we look to Appellant's Specification for any expressly defined claim terms. We additionally consider the meaning of other claim terms that are not expressly defined in the Specification, but are instead described in terms of non-limiting, exemplary embodiments, typically by incorporating broadening language, such as: "for example," "or the like," "may comprise," "for instance," and "may be," as emphasized in *italics* below:

A Credential

> **A Credential** is an item that provides the basis for confidence, belief, credit, evidence of authority, status, rights, entitlement to privileges, *or the like*, usually in written form. Recognition of a Credential *may comprise, for example*, of a scholastic diploma, academic transcript, award, certificate, or other document that represents an achievement.

Spec. ¶ 27 (emphasis added).

A Certified Electronic Credential

> **A Certified Electronic Credential** is a digitally or electronically produced credential, e.g. a computer-readable file representative of a credential, protected with one or more security features, and assigned one or more identifying features for use with validating the credential. The Certified Electronic

> Diploma™, or CeD™, is *an example* of a Certified Electronic Credential.

Spec. ¶ 26 (emphasis added).

The Credentialer

> **The Credentialer** is an entity, organization, body, *or the like*, that awards the Credential to the Recipient. *For example*, a Credentialer may award a Credential to a Recipient who has successfully completed one or more Courses, Recognition of a Credential may comprise, for example, a scholastic diploma, academic transcript, award, certificate or other issuance that represents an achievement A Course *may be*, *for example*, a field of study that is widely accepted and/or accredited, such that the completion of the Course gives the Recipient knowledge that has transactional value within a market

Spec. ¶ 13 (emphasis added).

Validation / Validation Entity

> **Validation** *may be* performed through a variety of methods. *For instance*, a **Validating Entity** may wish to validate the credential represented by the Certified Electronic Credential 101. Validation *may include* confirming that a Credential 101 is authentic, *e.g.*, that the Credentialer issued the credential to the Recipient consistent with credential information 104.

Spec. ¶ 33 (emphasis added).

> [Referring to Figure 7, v]alidation begins with a **Validating Entity** 701(a, b, c). A **Validating Entity** *may be, for example*, an employer, prospective employer, government agency, credentialing agency, or another entity seeking to authenticate the validity of the Credentials. The **Validating Entity** *may* present Authenticating Information, such as a URLN, to the Credentialer 702(a, b, c) via electronic communication 710, such as an API, onLine interface and/or a mobile application

> hosted by the Credentialer.

Spec. ¶ 68 (emphasis added).[4]

> A Validation mechanism *may* advantageously use URLN 102 to validate the Credential 101, *In some embodiments*, the Credentialer *may provide* an interface for the Validation mechanism, through which a **Validating Entity** *may input* the URLN 102 and receive a validation response, as described in more detail below, The interface *may be, for example*, a web site, SMS message, e-mail, or other similar electronic communication methods.

Spec. ¶ 34 (emphasis added).

Credential Validating

> As described herein, **credential validating** *may be* performed through the Credentialer, [and] involve the Publisher in providing a service or services that aid the validation process.

Spec. ¶ 26 (emphasis added).

[4] URLN: "Adobe demonstrative Certified Electronic Credential 101 may include a Universal Record Locating Number (or "URLN") 102. URLN 102 may comprise, for example, a unique combination of letters, numbers, and/or symbols, In some embodiments, URLN 102 may comprise a unique machine-readable code, such as a unique bar code or QR code. The URLN may allow for unique identification of the Certified Electronic Credential 101 and a link to one or more original data elements comprising the credentials, such as may be supplied by the Credentialer." Spec. ¶ 28.

Credentialer Validation Portal Interface

> The Validating Entity then proceeds to the **Credentialer's validation portal** at step S502, A validation portal *may be, for example*, a website, mobile application, desktop application, or other means of electronic communication. In embodiments in which the Credentialer is an academic college or university, the **validation portal** *may include* a web page on the registrar's website. In some embodiments, directions or a link to the **validation portal** *may be made available* on the Certified Electronic Credential. In some embodiments, a Validating Entity may proceed to a validation portal through a hyperlink embedded in the Certified Electronic Credential.

Spec. ¶ 59 (emphasis added).

Disputed Limitation L1
"**a credentialer validation portal interface** *available from a credentialer*"

The Examiner finds Roberts teaches limitation L1, at Figures 3 and 4, and paragraphs 52–55. Final Act. 3. The Examiner explains the "credentialee [is] directed to the online credential platform along with a reference to a requirement to be verified." *Id.*

Appellant argues that Roberts does not teach a credentialer validation portal. Appeal Br. 6. Appellant provides a non-limiting example of "a credentialer validation portal interface" (claim 1): "For example, a prospective employer uses a university's credential validation portal, such as a university web page, to validate whether a person did in fact receive a diploma from the university." *Id.* In support, Appellant contends:

> Roberts fails to teach or suggest a "credentialer validation portal interface" as recited in the independent claims. Instead, Roberts discloses the creation and use of a third-party hub system 100, which Applicant's Specification criticizes. *See,*

> *e.g.*, ¶¶ [0008] and [0056]. In Robert's third party platform 100, credential issuer 110 (e.g., university), credentialee 120 (e.g., graduate), and credential consumer 130 (e.g., prospective employer) all interact *directly with* the third party system 100. See, e.g., Roberts Fig. 1. As a result, each actor has skepticism about the information received: Platform 100, its data sources, its integrity, etc., are unknown and unrelated to credential issuer 110.

Appeal Br. 7.

At the outset, we give the claim 1 term "**credentialer's validating portal interface**" the broadest reasonable interpretation consistent with the Specification. (emphasis added). *See supra* n.3.

As reproduced above, we look to the Specification for *context*, and we find a non-limiting, exemplary description of the disputed claim term, in pertinent part: "A validation portal *may be, for example*, a website, mobile application, desktop application, *or other means of electronic communication*." Spec. ¶ 59 (emphasis added).

Therefore, we broadly but reasonably interpret the scope of the disputed L1 claim term "a credentialer validating portal interface" as covering *any means* of electronic communication, including as a non-limiting example, a web site, such as that taught by Robert's "Online Credential Platform 100" (Fig 3), as found by the Examiner. *See* Final Act. 3. *See* also Roberts ¶ 39: "FIG. 2 illustrates an example of credential components *in an online credential platform.*" (emphasis added).

Our broad but reasonable construction is fully consistent with the supporting description found in the Specification, for the reasons we explain

infra. *Id.* [5]

Disputed Limitation L1 (cont'd)

"*a credentialer validation portal interface* **available from a credentialer**"

We next focus our analysis on the L1 claim language "**available from a credentialer**" that was added by the amendment entered on June 8, 2016. Similarly, the language "**provided from a credentialer**" was added to remaining independent claims 18 and 22 by the same June 8, 2016 amendment. *See also* page 5, lines 10–21 of the Oral Hearing Transcript (mailed Nov. 5, 2019).

At the outset, we conclude the claim 1 language "**available from a credentialer**" does not require any information to be made available *directly* from a credentialer. Thus, under a broad but reasonable interpretation, we conclude the information could first pass through an intermediate system, and still be "**available from a credentialer**," within the meaning of claim 1.

Therefore, we find unpersuasive Appellant's contention in the Reply Brief that "the context of Roberts' paragraph [0052] demonstrates that the sentence in question refers to the credential issuer 110 providing a proxy

[5] *See Morris*, 127 F.3d at 1054. *Cf.* Spec. e.g., ¶ 77: "The present embodiments are therefore to be considered in all respects as illustrative and not restrictive, the scope of the invention being indicated by the claims of the application rather than by the foregoing description, and all changes which come within the meaning and range of equivalency of the claims are therefore intended to be embraced therein."

type and key to the online credential platform 100, not to a credential issuer 110 providing the online credential platform 100 itself." Reply Br. 3.

We conclude the language of claim 1 does not require any or all "credentialer validation portal interfaces" associated with a credentialer to be provided by the credentialer's own web site. *See e.g.,* Spec. ¶ 59: "In embodiments in which the Credentialer is an academic college or university, the **validation portal** *may include* a web page on the registrar's website." (emphasis added).

Thus, Appellant's description in the Specification (¶ 59) provides that even if the credentialer is an academic college or university, the credentialer *may include* (but is not required to include) a web page *on the registrar's website*. Since the registrar's website is reasonably understood as being an integral part of the academic college or university, it logically follows that the credentialer (e.g., an academic college or university) is *not required to provide a web page* (i.e., a credentialer validation portal interface) *on its own web site*, within the meaning of claim 1, under a broad but reasonable interpretation that is fully consistent with the Specification (¶ 59). *See also* n.5, *supra*.

Although Appellant argued during the oral hearing that the claimed invention requires essentially the same configuration as illustrated in Figure 7 of the Specification, we disagree, given the breadth of the claims and the breadth of the supporting descriptions found in the Specification (e.g., *see* Spec. ¶ 68, describing Figure 7. Contrary to Appellant's arguments, we conclude independent method claims 1 and 18 (or system claim 22) do not require a structural arrangement of elements as depicted in Appellant's Figure 7.

During the Oral Hearing Appellant further argued: "the distinction in the claims is the credential validation [] portal interface is intended to be **unique** to a particular credentialer, and Roberts doesn't have that configuration. It teaches an omnibus platform proffered -- for whatever issuers or credentialers are using that system." Oral Hearing Transcript 16, ll. 10–14: (emphasis added).

However, we need not reach the issue of whether Roberts teaches or suggests the argued "unique" relationship (*id*.), because we find no language in claim 1 that requires "the credential validation [] portal interface . . . to be **unique** to a particular credentialer" as argued by Appellant. *Id.* (emphasis added). Significantly, all claims on appeal are silent regarding any mention of the word "unique" or any language that positively recites the structural arrangement depicted in Figure 7 of the Specification. Nor do we find that system (apparatus) claim 22 overcomes the aforementioned deficiencies regarding the argued structural arrangement.

Further regarding Appellant's use of the indefinite article "a" ("**a** credentialer validation portal interface" — claim 1(emphasis added)), our reviewing court provides applicable guidance:

> [T]his court has repeatedly emphasized that an indefinite article "a" or "an" in patent parlance carries the meaning of "one or more" in open-ended claims containing the transitional phrase "comprising." That "a" or "an" can mean "one or more" is best described as a rule, rather than merely as a presumption or even a convention. The exceptions to this rule are extremely limited: a patentee must "evince[ ] a clear intent" to limit "a" or "an" to "one." The subsequent use of definite articles "the" or "said" in a claim to refer back to the same claim term does not change the general plural rule, but simply reinvokes that non-singular meaning.

SanDisk Corp. v. Kingston Technology Co., Inc., 695 F.3d 1348, 1360 (Fed. Cir. 2012) (*citing Baldwin Graphic Systems, Inc. v. Siebert*, 512 F.3d 1338, 1342 (Fed. Cir. 2008)).

To the extent that Appellant *intends* for the claimed credential validation portal interface "to be **unique** to a particular credentialer," it is our view that the best way to give the public notice of such intent is to amend the claims accordingly, because Appellant's arguments are not commensurate with the broader scope of the claims presented on appeal. *See* Oral Hearing Transcript 16, ll. 10–14: (emphasis added). [6] Because "applicants may amend claims to narrow their scope, a broad construction during prosecution creates no unfairness to the applicant or patentee." *In re ICON Health and Fitness, Inc*., 496 F.3d 1374, 1379 (Fed. Cir. 2007) (citation omitted).

[6] The claim as a whole must be considered to determine whether it apprises one of ordinary skill in the art of its scope, and therefore serves the *notice function* required by 35 U.S.C. § 112, second paragraph, by providing clear warning to others as to what constitutes infringement. *Solomon v. Kimberly-Clark Corp.*, 216 F.3d 1372, 1379 (Fed. Cir. 2000)(emphasis added). If the language of the claim is such that a person of ordinary skill in the art could not interpret the metes and bounds of the claims so as to understand how to avoid infringement, a rejection of the claim under 35 U.S.C. § 112, second paragraph is deemed appropriate. *Morton Int'l, Inc. v. Cardinal Chemical Co.*, 5 F.3d 1464, 1470 (Fed. Cir. 1993). Although the Board is authorized to reject claims under 37 C.F.R. § 41.50(b), no inference should be drawn when the Board elects not to do so. *See* Manual of Patent Examining Procedure (MPEP) § 1213.02.

For at least the aforementioned reasons, and based upon a preponderance of the evidence, we are not persuaded the Examiner erred in finding that Roberts (in combination with Ki) teaches or suggest contested limitation L1: "a credentialer validation portal interface available from a credentialer." Claim 1.

Limitations L2 and L3 of Independent Claim 1

Nor do we find any deficiencies regarding Rejection A of the remaining limitations L2 and L3 of independent claim 1 that are nominally argued by Appellant on pages 9 and 10 of the Appeal Brief:

> [L2] transmitting the validation response to the credentialer validation portal; and
>
> [L3] displaying validation information based on at least a portion of the validation response at the credentialer validation portal interface.

Claim 1.

We note method claim 1 does not specify who or what performs the recited steps or acts of "transmitting" and "displaying." Regarding limitations L1 and L2, the Examiner finds:

> [Roberts teaches] generating a validation response based on the identified certified electronic credential record; and transmitting the validation response to the credentialer validation portal (ROBERTS, Fig. 3-4, and par 0052-0055);
> ROBERTS does not explicitly disclose request being redirected from credentialer validation portal interface, and "displaying validation information based on at least a portion of the validation response at the credentialer validation portal interface", however, in an analogous art in network communication and most specifically, document transmission,

> Ki disclosed the concept of redirecting request for document to a target server (Ki, Fig. 3, and par 0036, 0055, a document request received at content service server from user is redirected to content provider server), and displaying information based on at least a portion of the returned data from the contents provider server at the contents service server portal interface (Ki, par 0060, the redirection agent program "receives the result, if necessary, performs additional conversion, and then provides the document to the web browser of the user");

Final Act. 4.

Based upon our review of the record, and given the breadth of the disputed claim terms we have addressed above, we find a preponderance of the evidence supports the Examiner's underlying factual findings. *Id.* As guided by our reviewing court: "'the question under 35 U.S.C. § 103 is not merely what the references expressly teach but what they would have *suggested* to one of ordinary skill in the art at the time the invention was made.'" *Merck & Co. v. Biocraft Labs., Inc*., 874 F.2d 804, 807 (Fed. Cir. 1989) (quoting *In re Lamberti*, 545 F.2d 747, 750 (CCPA 1976)). (Emphasis added); *see also* MPEP § 2123.

Although Appellant additionally urges that combining Ki with the teachings of Roberts "makes little sense" (Appeal Br. 13, ¶ 2), we find Ki at least evidences that the general concept of *redirection of information flow* was well known in the art at the time of Appellant's invention, and thus would have produced predictable results when combined with the teachings

and suggestions of the primary Roberts reference, in the manner proffered by the Examiner. *See* Final Act. 4–5; Ki, Fig. 3, "redirection system 300." [7]

Appellant further urges "there is no 'certified electronic credential validation request and proffered authentication information redirected from a credentialer validation portal interface provided by a credentialer' to be found in Roberts." Appeal Br. 10. Appellant cites to Robert's Figure 4 in support and contends: "The claims, on the other hand, relate to validating a 'certified electronic credential' issued by a credentialer, e.g., whether the credentialer issued the credential to the credentialee." Appeal Br. 11.

However, Roberts ¶ 39 expressly teaches: "A Credential Certificate can comprise the visual representation of the credential and all of the metadata related to it and can serve to verify the provenance of the credential." The Examiner relies upon Ki for teaching the redirection of information flow, as discussed above. Thus, Roberts' paragraph 39, in combination with Ki, buttresses the Examiner's responsive explanation bridging pages 8 and 9 of the Answer regarding this issue. [8]

Our reviewing court provides applicable guidance. "Non-obviousness cannot be established by attacking references individually where the

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[7] *See KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 401 (2007) ("[A] combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.").

[8] "Combining two embodiments disclosed adjacent to each other in a prior art patent does not require a leap of inventiveness." *Boston Scientific Scimed, Inc. v. Cordis Corp.*, 554 F.3d 982, 991 (Fed. Cir. 2009). Moreover, an obviousness inquiry is not limited to the prior art's preferred embodiment. *See, e.g., Pfizer, Inc. v. Apotex, Inc.*, 480 F.3d 1348, 1370 (Fed. Cir. 2007).

rejection is based upon the teachings of a combination of references." *In re Merck & Co*., 800 F.2d 1091, 1097 (Fed. Cir. 1986) (citing *Keller*, 642 F.2d at 425). In determining obviousness, a reference "must be read, not in isolation, but for what it fairly teaches in *combination* with the prior art as a whole." *Id.* (emphasis added).

Appellant also contends the Specification (¶¶ 8, 56) criticizes other prior art approaches (Appeal Br. 7). To the extent that Appellant is advancing a "teaching" away argument, we note the proper test is whether one or more of the references relied upon by the Examiner "teaches away" from the invention *claimed*, not whether Appellant's Specification criticizes other prior art approaches. Virtually all patent applications (and patents) mention the shortcomings of prior art approaches in the "Background of the Invention" section. The mere failure of a reference to mention alternatives known in the art does not constitute a teaching away from using the known elements. *See DePuy Spine, Inc. v. Medtronic Sofamor Danek, Inc*., 567 F.3d 1314, 1327 (Fed. Cir. 2009) ("A reference does not teach away […] if it merely expresses a general preference for an alternative invention but does not 'criticize, discredit, or otherwise discourage' investigation into the invention claimed.").

On this record, we are not persuaded that combining the respective familiar elements of the cited Roberts and Ki references in the manner proffered by the Examiner (*also* Final Act. 4–5) would have been "uniquely challenging or difficult for one of ordinary skill in the art" at the time of Appellants' invention. *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007) (citing *KSR*, 550 U.S. at 418).

Based upon our review of the record, and given the breadth of the disputed claim terms that we have addressed above, we find a preponderance of the evidence supports the Examiner's underlying factual findings and ultimate legal conclusion of obviousness regarding Rejection A of representative independent claim 1.

Therefore, we sustain the Examiner's obviousness Rejection A of independent representative claim 1. Grouped claims 2–9, 11, 17, 18, 22, 26, 27, 29, and 30 are also rejected under Rejection A, and were not separately argued. Accordingly, these grouped claims fall with representative independent claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Rejection B of claims 10, 12–16, 19–21, 23–25, and 28 under § 103

Regarding Rejection B of dependent claims 10, 12–16, 19–21, 23–25 and 28, Appellant avers that the various security features of the tertiary Johnson's reference "do not teach or suggest a credentialer validation portal interface as recited in the claims." Appeal Br. 13–14.

However, we have fully addressed above the specific reasons why we find Roberts and Ki teach or at least suggest the disputed "credentialer validation portal interface," as discussed above regarding Rejection A of independent claim 1. Appellant advances no further separate, substantive arguments regarding the remaining claims rejected under Rejection B. Arguments not made are waived. *See* 37 C.F.R. § 41.37(c)(1)(iv). Accordingly, we sustain the Examiner's obviousness Rejection B of claims dependent 10, 12–16, 19–21, 23–25, and 28.

CONCLUSION

The Examiner did not err in rejecting claims 1–30, as being obvious under 35 U.S.C. § 103, over the combined teachings and suggestions of the cited references.

DECISION SUMMARY

Claims Rejected	**35 U.S.C. §**	**Reference(s)/Basis**	**Affirmed**	**Reversed**
1–9, 11, 17, 18, 22, 26, 27, 29, 30	103	Roberts, Ki	1–9, 11, 17, 18, 22, 26, 27, 29, 30	
10,12–16, 19–21, 23–25, 28	103	Roberts, Ki, Johnson	10,12–16, 19–21, 23–25, 28	
Overall Outcome			1–30	

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