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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SEAN CALLANAN,
RUTHIE D. LYLE, PATRICK J. O’SULLIVAN,
FRED RAGUILLAT, and CAROL S. ZIMMET

Appeal 2018-004442
Application 14/249,144
Technology Center 3600

Before KENNETH G. SCHOPFER, TARA L. HUTCHINGS, and
ROBERT J. SILVERMAN, *Administrative Patent Judges*.

SILVERMAN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner’s decision rejecting claims 1–13, 23, 24, and 26–32. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as IBM Corporation. Appeal Br. 1.

ILLUSTRATIVE CLAIM

1. A method comprising:

a computing device receiving of a command by an attendance prompting tool to issue an attendance prompt to at least one attendee of an electronically-scheduled event, wherein said at least one attendee is denoted as being absent from the electronically-scheduled event when the at least one attendee is not present at a scheduled time of the electronically scheduled event;

the computing device ascertaining, whether an existence of at least one activity being performed by the at least one attendee with at least one electronic device;

the computing device, if at least one activity exists, generating an attendance prompt for the electronically-scheduled event, wherein said attendance prompt comprises at least a reminder message for the electronically-scheduled event and an attendance update mechanism for the at least one attendee to provide a response to the attendance prompt, and, wherein the attendance prompt is compatible with the at least one electronic device; and

the computing device interjecting, the generated attendance prompt into the at least one activity, wherein contents of the attendance prompt are presented to the at least one attendee operating the at least one electronic device.

REFERENCES

Name	Reference	Date
Theimer et al. ("Theimer")	US 5,812,865	Sept. 22, 1998
Bittman	US 6,173,153 B1	Jan. 9, 2001
Hodges	US 2007/0162315 A1	July 12, 2007
Aaron et al. ("Aaron")	US 2008/0195312 A1	Aug. 14, 2008
Bhatia	US 8,527,287 B1	Sept. 3, 2013
Crawford et al. ("Crawford")	US 8,898,231 B2	Nov. 25, 2014

REJECTIONS

I. Claims 1–13, 23, 24, and 26–32 are rejected under 35 U.S.C. § 101 as ineligible subject matter.

II. Claims 26 and 27 are rejected under 35 U.S.C. § 102(b) as anticipated by Bittman.

III. Claims 1–7, 11, 12, 23, and 24 are rejected under 35 U.S.C. § 103(a) as unpatentable over Bittman and Bhatia.

IV. Claim 8 is rejected under 35 U.S.C. § 103(a) as unpatentable over Bittman, Bhatia, and Aaron.

V. Claims 9, 10, 13, and 21 are rejected under 35 U.S.C. § 103(a) as unpatentable over Bittman, Bhatia, and Theimer.

VI. Claims 28–30 are rejected under 35 U.S.C. § 103(a) as unpatentable over Bittman and Hodges.

VII. Claim 31 is rejected under 35 U.S.C. § 103(a) as unpatentable over Bittman, Hodges, and Crawford.

VIII. Claim 32 is rejected under 35 U.S.C. § 103(a) as unpatentable over Bittman and Crawford.

FINDINGS OF FACT

The findings of fact relied upon, which are supported by a preponderance of the evidence, appear in the following Analysis.

ANALYSIS

Subject-Matter Eligibility

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. Yet, subject matter belonging to any of the statutory categories may, nevertheless, be ineligible for patenting. The Supreme

Court has interpreted § 101 to exclude laws of nature, natural phenomena, and abstract ideas, because they are regarded as the basic tools of scientific and technological work, such that including them within the domain of patent protection would risk inhibiting future innovation premised upon them. *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013).

Of course, “[a]t some level, ‘all inventions . . . embody, use, reflect, rest upon, or apply’” these basic tools of scientific and technological work. *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 217 (2014). Accordingly, evaluating ineligible subject matter, under these judicial exclusions, involves a two-step framework for “distinguish[ing] between patents that claim the buildin[g] block[s] of human ingenuity and those that integrate the building blocks into something more, thereby transform[ing] them into a patent-eligible invention.” *Id.* (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 88–89 (2012) (quotation marks omitted)). The first step determines whether the claim is directed to judicially excluded subject matter (such as a so-called “abstract idea”); the second step determines whether there are any “additional elements” recited in the claim that (either individually or as an “ordered combination”) amount to “significantly more” than the identified judicially excepted subject matter itself. *Id.* at 217–18.

In 2019, the USPTO published revised guidance on the application of § 101, in accordance with judicial precedent. 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50, 52 (Jan. 7, 2019) (“*2019 Revised Guidance*”). Under the *2019 Revised Guidance*, a claim is “directed to” an abstract idea, only if the claim recites any of (1) mathematical concepts, (2) certain methods of organizing human activity, and (3) mental

processes — without integrating such abstract idea into a “practical application,” i.e., without “apply[ing], rely[ing] on, or us[ing] 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.* at 52–55. The considerations articulated in MPEP § 2106.05(a)–(c) and (e)–(h) bear upon whether a claim element (or combination of elements) integrates an abstract idea into a practical application. *Id.* at 55. A claim that is “directed to” an abstract idea constitutes ineligible subject matter, unless the claim recites an additional element (or combination of elements) amounting to significantly more than the abstract idea. *Id.* at 56.

Although created “[i]n accordance with judicial precedent” (*id.* at 52), the *2019 Revised Guidance* enumerates the analytical steps differently than the Supreme Court’s *Alice* opinion. Step 1 of the *2019 Revised Guidance* addresses whether the claimed subject matter falls within any of the statutory categories of § 101. *Id.* at 53–54. Step 2A, Prong One, concerns whether the claim at issue recites ineligible subject matter and, if an abstract idea is recited, Step 2A, Prong Two, addresses whether the recited abstract idea is integrated into a practical application. *Id.* at 54–55. Unless such integration exists, the analysis proceeds to Step 2B, in order to determine whether any additional element (or combination of elements) amounts to significantly more than the identified abstract idea. *Id.* at 56.

The Appellant’s arguments focus on claim 1, taking the position claims 2–13, 23, 24, and 26–32 stand or fall together with independent claim 1. Appeal Br. 9. The present analysis likewise addresses claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

With respect to Step 1 of the *2019 Revised Guidance*, the Examiner determines that the claims are within identified categories of § 101. Final Action 9.

In regard to Step 2A, Prong One, there are inconsistencies in the Examiner’s identification of claim limitations said to recite a judicial exception. In one aspect, the Examiner states (in relation to limitations in independent claim 1):

[A]n abstract idea is deemed to be present in the claims, namely the abstract idea of generating attendance prompts in order to determine the attendance of a user for a scheduled event on a device which utilizes the claim language of receiving, ascertaining, generating, and interjecting.

Id. at 10. The Examiner characterizes the identified concept as “An Idea of Itself” — a description that the Examiner considers to encompass “[a]n idea standing alone such as an un-instantiated concept, plan or scheme,” as well as a “mental process . . . that ‘can be performed in the human mind, or by a human using a pen and paper.’” *Id.* In another aspect, the Examiner parses independent claims 1 and 26 and regards every individual limitation of claim 1 and every individual limitation of claim 26 as “An Abstract Idea of Itself.” *Id.* at 11–12.

Of the Examiner’s two approaches to the identification of a potential judicial exception, the first one — whereby the “receiving,” “ascertaining,” “generating,” and “interjecting” limitations of claim 1 are said to describe a judicial exception (*id.* at 10) — comports better with the Step 2A, Prong One, inquiry articulated in the *2019 Revised Guidance*, insofar as the identified concept is regarded as an abstract idea in the category of “[m]ental processes” (84 Fed. Reg. at 52).

The following limitations of claim 1 that the Examiner identifies (*see* Final Action 10) may be regarded as encompassing activities that could be performed mentally, as they embrace “observation, evaluation, judgment, [or] opinion” (*2019 Revised Guidance*, 84 Fed. Reg. at 52):

a computing device receiving of a command by an attendance prompting tool to issue an attendance prompt to at least one attendee of an electronically-scheduled event, wherein said at least one attendee is denoted as being absent from the electronically-scheduled event when the at least one attendee is not present at a scheduled time of the electronically scheduled event; [and]

the computing device ascertaining, whether an existence of at least one activity being performed by the at least one attendee with at least one electronic device.

See also Answer 6–7. Leaving aside the computer-implementation features, these limitations involve the mental activities of observing the absence of an attendee and recognizing that the attendee is otherwise occupied.

Accordingly, we agree with the Examiner’s analysis, corresponding to Step 2A, Prong One, to the extent that the foregoing identified “receiving” and “ascertaining” limitations of claim 1 may be regarded as judicially excepted subject matter — specifically an abstract idea in the category of a mental process.

On the other hand, it is unclear how the “generating” and “interjecting” limitations — both of which the Examiner includes as part of a judicial exception (*see* Final Action 10) — would be subject to such a categorization. These limitations of claim 1 state:

the computing device, if at least one activity exists, generating an attendance prompt for the electronically-scheduled event, wherein said attendance prompt comprises at least a reminder message for the electronically-scheduled event and an attendance update mechanism for the at least one

attendee to provide a response to the attendance prompt, and, wherein the attendance prompt is compatible with the at least one electronic device; and

the computing device interjecting, the generated attendance prompt into the at least one activity, wherein contents of the attendance prompt are presented to the at least one attendee operating the at least one electronic device.

The Examiner does not explain why these steps might be regarded as part of a mental process. To the contrary, the “generating” and “interjecting” steps call for the creation of a message in a form that is “compatible with the at least one electronic device” and presenting such message in a manner consistent with the medium of the claimed “activity.” For example, the Specification refers to “an attendance prompt 225 being interjected into the phone call of an absent attendee 215 can be a recorded audio message, whereas the attendance prompt 225 for an instant messaging session can require only text” and “if the absent attendee is in an instant messaging session, the attendance prompt can be presented to the attendee within the session’s window.” Spec. ¶¶ 36, 72.

The Appellant does not squarely address why the claims may or may not be said to recite a mental process, as discussed above. The Appellant contends that the claims should be determined to be eligible, under the so-called “machine or transformation test,” because claim 1 includes computer-based features:

All aspects of the claimed invention are tied to a computing device (i.e., machine). Additionally, the claimed invention also involves determining the existence of an activity on an electronic device and sending an attendance prompt that is compatible with the electronic device. Consequently, the claimed invention meets the machine or transformation test,

which is an “important and useful clue” that the claimed invention, as whole, is directed to statutory subject matter.

Appeal Br. 13. Yet, as the Appellant concedes, the “machine or transformation test” is not dispositive of the eligibility question. *Id.* Moreover, the presence of computer features does not foreclose the recitation of a judicial exception in claim 1.

We further note that there may be multiple ways to characterize judicial exceptions described in patent claims. *See, e.g., Apple, Inc. v. Ameranth, Inc.*, 842, F.3d 1229, 1240 (Fed. Cir. 2016) (“An abstract idea can generally be described at different levels of abstraction.”) In the instant case, as an alternative to the approach discussed above, all the limitations of claim 1 (leaving aside, however, the particulars of computer implementation) may be regarded as reciting a “[c]ertain method[] of organizing human activity” — i.e., “managing personal behavior or relationships or interactions between people.” *2019 Revised Guidance*, 84 Fed. Reg. at 52. Indeed, the method of claim 1 bears a strong similarity to the “attention manager” claims addressed in *Interval Licensing LLC v. AOL, Inc.*, 896 F.3d 1335 (Fed. Cir. 2018), wherein the Federal Circuit explained:

Standing alone, the act of providing someone an additional set of information without disrupting the ongoing provision of an initial set of information is an abstract idea. As the district court aptly observed, this “basic and longstanding practice can be found in, for example, a television station’s use of a breaking news ticker across the bottom of the screen.” The court also pointed to the nontechnical human activity of passing a note to a person who is in the middle of a meeting or conversation as further illustrating the basic, longstanding practice that is the focus of the claimed invention.

Interval Licensing, 896 F.3d at 1344 (citations omitted).

In view of the foregoing discussion, we are not persuaded of error in the Examiner’s analysis that corresponds to Step 2A, Prong One.

Turning to Step 2A, Prong Two, unless a claim that recites a judicial exception (such as an abstract idea) “integrates the recited judicial exception into a practical application of that exception,” the claim is “directed to” the judicial exception. *2019 Revised Guidance*, 84 Fed. Reg. at 53. The analysis of such an “integration into a practical application” involves “[i]dentifying . . . any additional elements recited in the claim beyond the judicial exception(s)” and “evaluating those additional elements individually and in combination to determine whether they integrate the exception into a practical application.” *Id.* at 54–55. Among the considerations “indicative that an additional element (or combination of elements) may have integrated the exception into a practical application” is whether “[a]n additional element reflects an improvement in the functioning of a computer, or an improvement to other technology or technical field.” *Id.* at 55 (footnote omitted). “[W]hether an additional element or combination of elements integrate the exception into a practical application should be evaluated on the claim as a whole.” *Id.* at 55 n.24.

Under an approach employed by the Examiner (*see* Final Action 10), in regard to the Step 2A, Prong Two, inquiries, the “generating” and “interjecting” limitations of claim 1 may be regarded as additional elements. The Appellant argues that there are “technical” aspects to these claim limitations that give rise to the patent-eligibility of claim 1:

An attendance prompt (i.e., a computer message) is generated and generated to be compatible with the electronic device, which is also a technical process. The attendance prompt is then *interjected* into the activity, which involves, for example,

the insertion of data into an instant messaging session, which is another technical process.

Reply Br. 2–3. *See also* Appeal Br. 22–23.

Yet, the “generating” and “interjecting” limitations of claim 1 serve to generally link the judicial exception to the computer environment and to add the extra-solution activity of presenting a prompt to an absent attendee. *See Bilski v. Kappos*, 561 U.S. 593, 610 (2010) (“[T]he prohibition against patenting abstract ideas ‘cannot be circumvented by attempting to limit the use of the formula to a particular technological environment.’”) (quoting *Diamond v. Diehr*, 450 U.S. 175, 191 (1981)). Therefore, the “generating” and “interjecting” steps do not integrate judicial exceptions into practical applications. *See 2019 Revised Guidance*, 84 Fed. Reg. at 55.

Alternatively, as discussed above, claim 1 may be understood as reciting a “[c]ertain method[] of organizing human activity.” *See id.* at 52. Under this alternative approach, the claimed subject matter that might be regarded as comprising “additional limitations” is even further curtailed — again providing no more than the technological context wherein the judicial exception would be situated.

Under Step 2B of the *2019 Revised Guidance* (84 Fed. Reg. at 56), a claim that recites a judicial exception (such as an abstract idea) might, nevertheless, be patent-eligible, if the claim contains “additional elements amount[ing] to significantly more than the exception itself” — i.e., “a specific limitation or combination of limitations that are not well-understood, routine, conventional activity in the field, which is indicative that an inventive concept may be present.” *See Alice*, 573 U.S. at 223

(“[T]he mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention.”)

Under the Examiner’s analysis (*see* Final Action 10), the “generating” and “interjecting” limitations of claim 1 may be regarded as additional elements. Yet, these features are claimed in a broad, unspecific manner. The “attendance prompt” that is “generat[ed]” has no particular form, beyond the broad recitation that it is “compatible with the at least one electronic device,” as claim 1 states. Nor does the claim language about “interjecting” the “generated attendance prompt into the at least one activity” provide any specificity beyond the spare statement, in claim 1, that the “contents of the attendance prompt are presented to the at least one attendee operating the at least one electronic device.” Indeed, the Specification indicates that the broadly claimed “generating” and “interjecting” features could take the form of “interject[ing]” “a recorded audio message” “into [a] phone call of an absent attendee,” or providing “text” in “an instant messaging session.” Spec. ¶ 36. *See also* Spec. ¶¶ 4, 72.

The Appellant suggests that the “generating” and “interjecting” limitations might amount to significantly more than the recited judicial exception. Appeal Br. 21–22. Yet, the Appellant’s position relies upon features that do not appear in claim 1. The Appellant contends that “the claimed invention requires generating an attendance prompt (i.e., the creation of a data structure) that is compatible with the electronic device” and “format[ing] the attendance prompt to accommodate the capabilities of the electronic device.” *Id.* at 22. Such “creation of a data structure” and “format[ing]” are not set forth in claim 1 and, therefore, cannot amount to

significantly more than a recited judicial exception. Thus, the Appellant does not persuade us of error, in regard to the inquiries of Step 2B.

In the alternative analysis presented above, wherein claim 1 is understood as reciting a “[c]ertain method[] of organizing human activity” (*see id.* at 52), the “additional limitations” amount to no more than the linkage to the broadly recited computer implementation. The Appellant does not even suggest that such a generic computer context (*see Spec.* ¶¶ 11–17) — regardless of whether its elements were regarded individually or in combination — might provide significantly more than a judicial exception. Therefore, under the alternative analysis presented herein, we are not persuaded that claim 1 might include “significantly more” than a judicial exception, per the Step 2B analysis.

We have considered all of the Appellant’s arguments (including those made in the Reply Brief) and find them unpersuasive.

Accordingly, in view of the foregoing analysis, we sustain the rejection of independent claim 1 — as well as independent claim 26 and dependent claims 2–13, 23, 24, and 27–32 (*see Appeal Br.* 9) — under 35 U.S.C. § 101.

Anticipation

Independent claim 26 and dependent claim 27 stand rejected as anticipated by Bittman.

Claim 26 recites:

26. A computer program product, comprising:
a computer readable hardware storage device having stored therein computer usable code,

the computer usable code, which when executed by a computer hardware system, causes the computer hardware system to perform:

automatically determining that an attendee of an electronically-scheduled event is not present at a scheduled time of the event;

identifying, for the attendee previously-determined to not be present at the event, an active session involving the attendee; and

sending, to an electronic device associated with the attendee and based upon the identified active session involving the attendee, a message including an attendance prompt, wherein

the electronic device presents the attendance prompt to the attendee.²

According to the Examiner, Bittman teaches the “sending” limitation. Final Action 21 (citing Bittman col. 6, ll. 37–48); Answer 16 (citing Bittman col. 7, ll. 1–45). The Examiner states that the relevant portion of Bittman teaches that “once a late user tries to access a class or meeting that they are late to a messages [sic] is sent to the teacher prompting them to accept the latecomer” and “the teacher or person running the meeting gets information on the lateness of the user and can either accept or reject their attendance.” Answer 16. The Examiner further explains:

This is viewed by the Examiner as a late participant connecting and the system realizing they are there for a specific class or meeting automatically. Since the information is passed for a soft key approval [in Bittman,] this indicates that the active session which is being run by the teacher is notified, indicating

² As presented, claim 26 appears to include three indented paragraphs (beginning with the words “automatically,” “identifying,” and “sending,” respectively), followed by a final paragraph (beginning with the phrase “the electronic device presents”). Appeal Br. 41 (Claims App.).

the [Bittman] system has a concept of who is currently there and newly added and determines based on the input of a teacher to allow them or not into the meeting or class (i.e. allowing the user into an active session).

Id.

Yet, as the Appellant argues, Bittman’s disclosure of a teacher receiving an indication that a participant is tardy — i.e., disclosure corresponding to the claimed “determining that an attendee of an electronically-scheduled event is not present at a scheduled time of the event” — cannot also disclose the claimed “sending, to an electronic device associated with the attendee and based upon the identified active session involving the attendee, a message including an attendance prompt.” *See* Appeal Br. 26; Reply Br. 7–10.

The “sending” limitation of claim 26 requires a determination that the “attendee” is absent. The Examiner’s position would render the “sending” limitation meaningless, because this limitation would map to the same disclosure that the Examiner relies upon for the “determining” limitation. “Claims must be ‘interpreted with an eye toward giving effect to all terms in the claim.’” *Becton, Dickinson & Co. v. Tyco Healthcare Grp., LP*, 616 F.3d 1249, 1257 (Fed. Cir. 2010) (quoting *Bicon, Inc. v. Straumann Co.*, 441 F.3d 945, 950 (Fed. Cir. 2006)). *See also In re Power Integrations, Inc.*, 884 F.3d 1370, 1376 (Fed. Cir. 2018) (explaining that a “problem with the board’s claim construction is that it renders claim language meaningless.”)

Furthermore, the Examiner’s mapping of the claim language to Bittman conflicts with the claimed requirement that “a message including an attendance prompt” be “sen[t] to an electronic device associated with the attendee and based upon the identified active session involving the

attendee,” such that “the electronic device presents the attendance prompt to the attendee”:

While the Examiner asserts “the broadest reasonable interpretation of the claim it is not clear that the attendee is getting a second prompt,” the claim clearly requires that “the electronic device presents the attendance prompt to the attendee.” The information that is sent by the office to the teacher ([Bittman’s] steps 185, 189) is neither an “attendance prompt” nor presented to the attendee. As admitted with the Examiner’s analysis . . . , “a messages is *sent to the teacher* prompting them [sic] to accept the latecomer” and “*teacher or person running the meeting gets information on the lateness.*” The message is sent to the teacher — not the electronic device of the attendee. Moreover[, in Bittman], the teacher is prompted — not “the electronic device presents the attendance prompt to the attendee,” as claimed.

Reply Br. 9.

In view of the foregoing analysis, we do not sustain the rejection of independent claim 26, along with dependent claim 27, under 35 U.S.C. § 102(b).

Obviousness

I. Claims 1–13, 23, and 24

In the Examiner’s analysis, Bittman teaches the following limitations of independent claim 1:

a computing device receiving of a command by an attendance prompting tool to issue an attendance prompt to at least one attendee of an electronically-scheduled event, wherein said at least one attendee is denoted as being absent from the electronically-scheduled event when the at least one attendee is not present at a scheduled time of the electronically scheduled event; [and]

the computing device ascertaining, whether an existence of at least one activity being performed by the at least one attendee with at least one electronic device.

See Final Action 22 (citing Bittman col. 5, ll. 27–34, col. 6, ll. 36–47, col. 7, ll. 21–39). *See also* Answer 17–19 (citing Bittman col. 7, ll. 1–47).

According to the Examiner, the claimed “receiving of a command . . . to issue an attendance prompt” to the “at least one attendee,” “wherein said at least one attendee is denoted as being absent,” maps to the cited portions of Bittman that teach “provid[ing] attendance prompting as part of an electronically scheduled class and indicating if a user is absent because they didn’t respond to the prompt at the class.” Final Action 22. In Bittman, the operation of responding to such a prompt is described as follows:

To begin the session, the teacher presses an attendance soft key 168, thereby triggering the software routine 168 to display a prompt 169 at which the user enters a PIN code, thereby verifying the session.

Bittman col. 6, ll. 42–45. *See also* *id.* col. 7, ll. 30–45.

The Examiner relies upon the same functionality of Bittman, for teaching claim 1’s limitation of “ascertaining . . . an existence of at least one activity being performed by the at least one attendee with at least one electronic device.” Final Action 22 (citing Bittman col. 6, ll. 36–47). According to the Examiner, Bittman discloses claim 1’s “ascertaining” limitation, because “Bittman teaches computing devices that determine whether a user is using an electronic device with respect to the class by responding to the prompt with a pin code.” *Id.* *See also* Answer 17–19.

Yet, claim 1 recites “ascertaining” an “activity being performed by” an “attendee,” which occurs after the attendee “is denoted as being absent from the electronically-scheduled event.” Thereafter, the method of claim 1

calls for “generating an attendance prompt” for the absent attendee and “interjecting” this “attendance prompt” into the “activity” identified in the “ascertaining” step.

Therefore, as the Appellant explains, the Examiner’s mapping of claim 1 to Bittman conflicts with the temporal sequence set forth in claim 1. Appeal Br. 27–29; Reply Br. 11. As the Appellant states: “[I]t does not make sense for the ‘generating an attendance prompt’ to be performed ‘if at least one activity exists’ since the Examiner has alleged that the ‘at least one activity’ corresponds to a user responding to an attendance prompt.” Appeal Br. 29.

Accordingly, we agree with the Appellant’s position that the Examiner’s analysis does not sufficiently demonstrate that Bittman teaches the “ascertaining” limitation of claim 1. Consequently, we do not sustain the rejection of independent claim 1, and dependent claims 2–13, 23, and 24, under 35 U.S.C. § 103(a).

II. Claims 28–32

The rejections of dependent claims 28–32 rely upon the Examiner’s mapping of Bittman to base claim 26 (*see* Final Action 43–47), which is addressed, above, in regard to the anticipation rejection of independent claim 26.

Accordingly, based upon the analysis provided above, in regard to independent claim 26, we do not sustain the rejections of claims 28–32 under 35 U.S.C. § 103(a).

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–13, 23, 24, 26–32	101	Subject-matter eligibility	1–13, 23, 24, 26–32	
26, 27	102(b)	Bittman		26, 27
1–7, 11, 12, 23, 24	103(a)	Bittman, Bhatia		1–7, 11, 12, 23, 24
8	103(a)	Bittman, Bhatia, Aaron		8
9, 10, 13, 21	103(a)	Bittman, Bhatia, Theimer		9, 10, 13, 21
28–30	103(a)	Bittman, Hodges		28–30
31	103(a)	Bittman, Hodges, Crawford		31
32	103(a)	Bittman, Crawford		32
Overall Outcome			1–13, 23, 24, 26–32	

TIME PERIOD FOR RESPONSE

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