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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ROGER SUMNER and ANTHONY DEZONNO¹

Appeal 2018-004803
Application 11/022,742
Technology Center 3600

Before ROBERT E. NAPPI, LINZY T. McCARTNEY, and
MICHAEL T. CYGAN, *Administrative Patent Judges*.

NAPPI, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) of the Final Rejection of claims 1 through 6, 8, 10 through 21, 23 through 28, 30, 33 through 43, and 45 through 50. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

INVENTION

The invention is directed to a system for a business method and system for reporting routing transactions using business strategy and tactics

¹ According to Appellants, the real party in interest is, Aspect Software, Inc. App. Br. 2.

information. Abstract. Claim 1 is illustrative of the invention and is reproduced below:

1. A method for making routing decisions, routing calls, and reporting routing transactions using information collected from a transaction routing system, said method comprising the steps of:

providing a transaction routing system coupled to a business system through a metric measurement interface comprised of a contact center, a memory for storing reports, a contact center evaluator using a business strategy model to create an influence diagram, a routing rules engine, a business rules evaluator, a router, and a user display wherein the model includes a branch representing a path for a strategic initiative that is synthesized by adding metrics;

the contact center evaluator, collecting information from the contact center, the rules engine, and the business rules evaluator;

the router coupled to the contact center evaluator and generating routing transaction decisions and routing calls based on multiple business strategies deployed over a given period in parallel to drive business indicators to a desired result wherein a lifecycle state and importance value is associated with each strategy and wherein each strategy is evaluated to determine a likelihood of success rating, and on inputted information from the contact center, the rules engine and the business evaluator; and

the contact center selecting a maximum benefit strategy for implementation and reporting routing transactions by displaying on the user display at least one report which illustrates the business strategies, the routing decisions, and impact of the business strategies on resulting business metrics diagrammed along with links showing how the routing decisions meet objectives of the business strategies and links showing relationships between resulting business metrics with a singular direction for all metrics and which allow users to change the relationship between business metrics.

REJECTIONS AT ISSUE

The Examiner has rejected claims 1 through 6, 8, 10 through 21, 23 through 28, 30, 33 through 43, and 45 through 50 under 35 U.S.C. § 101 for being directed to patent-ineligible subject matter. Final Act. 12–23.²

The Examiner has rejected claims 1, 10 through 21, 23, and 46 under 35 U.S.C. § 103(a) as being unpatentable over Vivek Bapat & David T. Sturrock, (*The Arena Product Family: Enterprise Modeling Solutions* 210–17, PROCEEDINGS OF THE 2003 WINTER SIMULATION CONFERENCE (2003)) (hereinafter “Bapat”) and Mengshoel et al., (US 2003/0095652 A1, published May 22, 2003) (hereinafter “Mengshoel”). Final Act. 23–40.

The Examiner has rejected claim 2 under 35 U.S.C. § 103(a) as being unpatentable over Bapat, Mengshoel, and Official Notice. Final Act. 40–42.

The Examiner has rejected claims 3 through 6 and 8 under 35 U.S.C. § 103(a) as being unpatentable over Bapat, Mengshoel, and Davies et al., (US 2003/0033191 A1, published Feb. 13, 2003) (hereinafter “Davies”). Final Act. 42–46.

The Examiner has rejected claims 24, 33, 37 through 43, and 45 under 35 U.S.C. § 103(a) as being unpatentable over Bapat, Mengshoel, Carl R. Anderson & Carl P. Zeithaml, *Stage of the Product Life Cycle, Business Strategy, and Business Performance*, 27 ACADEMY OF MANAGEMENT JOURNAL 5–24 (1984)) (hereinafter “Zeithaml”) and Walters (US

² Throughout this Opinion, we refer to the Appeal Brief, filed November 9, 2017 (“App. Br.”), the Reply Brief, filed April 5, 2018 (“Reply Br.”) the Examiner’s Answer, mailed February 7, 2018 (“Answer”), and the Final Office Action, mailed April 14, 2017 (“Final Act.”).

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2005/0013428 A1, published Jan. 20, 2005) (hereinafter “Walters”). Final Act. 46–50.

The Examiner has rejected claims 34 and 35 under 35 U.S.C. § 103(a) as being unpatentable over Bapat, Mengshoel, Zeithaml, Walters, and Aleia et al., (US 5,991,733, issued Nov. 23, 1999) (hereinafter “Aleia”). Final Act. 50–51.

The Examiner has rejected claims 25 and 36 under 35 U.S.C. § 103(a) as being unpatentable over Bapat, Mengshoel, Zeithaml, Walters, and Kosiba et al., (US 2005/0065837 A1, published Mar. 24, 2005) (hereinafter “Kosiba”). Final Act. 52–55.

The Examiner has rejected claims 26 through 28 and 30 under 35 U.S.C. § 103(a) as being unpatentable over Bapat, Mengshoel, Zeithaml, Walters, Kosiba, and Davies. Final Act. 55–56.

The Examiner has rejected claim 47 under 35 U.S.C. § 103(a) as being unpatentable over Bapat, Mengshoel, and Kosiba. Final Act. 56–57.

The Examiner has rejected claim 48 under 35 U.S.C. § 103(a) as being unpatentable over Bapat, Mengshoel, Kosiba, and Zeithaml. Final Act. 58–59.

The Examiner has rejected claims 49 and 50 under 35 U.S.C. § 103(a) as being unpatentable over Bapat, Mengshoel, Kosiba, and Walters. Final Act. 59–60.

ANALYSIS

We have reviewed Appellants’ arguments in the Briefs, the Examiner’s rejections, and the Examiner’s response to Appellants’

arguments. Appellants' arguments have persuaded us of error in the Examiner's rejections of claims 1 through 6, 8, 10 through 21, 23 through 28, 30, 33 through 43, and 45 through 50 under 35 U.S.C. § 103(a). However, Appellants' arguments have not persuaded us of error in the Examiner's rejection of claims 1 through 6, 8, 10 through 21, 23 through 28, 30, 33 through 43, and 45 through 50 under 35 U.S.C. § 101.

Rejection 35 U.S.C. § 101

PRINCIPLES OF LAW

Patent-eligible subject matter is defined in 35 U.S.C. § 101 of the Patent Act, which recites:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

There are, however, three judicially created exceptions to the broad categories of patent-eligible subject matter in 35 U.S.C. § 101: “[l]aws of nature, natural phenomena, and abstract ideas.” *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014); *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 70 (2012).

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*. *Alice*, 573 U.S. at 217–18 (citing *Mayo*, 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, 67 (1972)). Concepts determined to be patent eligible include physical and chemical processes, such as “molding rubber products” (*Diamond v. Diehr*, 450 U.S. 175, 191 (1981)); “tanning, dyeing, making water-proof cloth, vulcanizing India rubber, smelting ores” (*id.* at 182 n.7 (quoting *Corning v. Burden*, 56 U.S. 252, 267–68 (1853))); 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 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.* (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.* (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 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Memorandum”). Under that guidance, we first look to whether the claim is directed to a judicial exception because:

- (1) the claim recites a judicial exception, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human activity such as a fundamental economic practice, or mental processes); and
- (2) the claim as a whole fails to recite additional elements that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h) (9th ed. 2018)).

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.

See Memorandum.

ANALYSIS

Abstract Idea.

The Examiner finds that the claims are not patent eligible as they are directed to a judicial exception without reciting significantly more. Final Act. 12–23. Specifically, the Examiner states that the claims are directed to an abstract idea; in particular:

the abstract idea of collecting information regarding the assigning of resources in a contact center utilizing an analysis of the gathered data and generates updated routing of transactions which utilize the claim language of generating routing transaction decision, and selecting a maximum benefit strategy which are seen as certain methods of organizing human activity (concepts relating to interpersonal and intrapersonal activities, such as managing relationships or transactions between people, social activities, and human behavior; satisfying or avoiding a legal obligation; advertising, marketing, and sales activities or behaviors; and managing human mental activities) which utilizes providing, inputting, monitor and evaluating using a business strategy model, and collecting information which are seen as collecting information, analyzing it, and displaying certain results of collection and analysis

Final Act. 13–14. Further, the Examiner provides an analysis of Appellants’ claims finding that they recite limitations directed to collecting and gathering information and analyzing it, concluding they recite an abstract idea, citing *Electric Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016) as showing that claims that recite collecting information and analyzing have been held recite abstract ideas. Final Act. 15–16.

Appellants argue “the claims are not directed merely at the abstract idea;” rather, Appellants argue the claims provide a technological improvement in transaction routing systems. App. Br. 5. Appellants argue the claims when considered as a whole are more than an abstract idea but recite various structural elements, the functional interaction of which results in the “improved routing and reporting of transactions to enable routing outcomes that meet business objectives.” Reply Br. 2; App. Br. 5.

We have considered the Examiner’s conclusion that the claims are directed to an abstract idea. We concur with the Examiner that representative claim 1 is directed to a method of managing interactions between people (an abstract idea of organizing human activity) and collecting/gathering information and analyzing it (a mental process). Claim 1 recites “providing a transaction routing system coupled to a business system,” a “router coupled to the contact center evaluator and generating routing transaction decisions and routing calls based on multiple business strategies deployed over a given period in parallel to drive business indicators to a desired result . . .,” and “the contact center selecting a maximum benefit strategy for implementing and reporting routing transactions by displaying” These limitations are directed to routing transactions/calls, assumedly between people or business units (groups of

people), and as such recite an abstract idea of managing relationships between people. These limitations of routing a transaction are similar to those performed in a mailroom, which have been considered to be an abstract method of organizing human activity by our reviewing court. *See Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1317–18 (Fed. Cir. 2016) (stating “mailrooms receive correspondence, keep business rules defining actions to be taken regarding correspondence based on attributes of the correspondence, apply those business rules to correspondence, and take certain actions based on the application of business rules” and holding that this represents an abstract concept of organizing human activity). Further, these limitations are directed to routing following rules and applying judgment, can also be construed as reciting a mental process, as the steps of routing a call based upon rules is one that can be performed in the human mind, e.g., a phone operator.

Claim 1 also recites “a metric measurement interface” (a data gathering or observation element), “a contact center evaluator using a business strategy model to create an influence diagram” (a data analysis or evaluation element), “contract center evaluator, collecting information from the contact center . . .” (data gathering or evaluation element), and “displaying on the user display at least one report which illustrates the business strategies, the routing decisions, and impact on the business strategies . . .” (a step displaying the data analysis or evaluation). These limitations, under their broadest reasonable interpretation, recite an abstract mental process of collecting/gathering information and analyzing it. Our reviewing court has concluded that abstract ideas include the concepts of “collecting, displaying, and manipulating data.” *Intellectual Ventures I LLC*

v. Capital One Fin. Corp., 850 F.3d 1332, 1340 (Fed. Cir. 2017). *See also Content Extraction & Transmission LLC v. Wells Fargo Bank, N.A.*, 776 F.3d 1343, 1347 (Fed. Cir. 2014); *Electric Power Grp.*, 830 F.3d at 1353.

Further, merely combining several abstract ideas does not render the combination any less abstract. *RecogniCorp, LLC v. Nintendo Co.*, 855 F.3d 1322, 1327 (Fed. Cir. 2017) (“Adding one abstract idea (math) to another abstract idea . . . does not render the claim non-abstract.”); *see also FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093–94 (Fed. Cir. 2016) (determining the pending claims were directed to a combination of abstract ideas).

Furthermore, Appellants appear to contest the Examiner’s determination that the claims are directed to an abstract idea, discussed *infra*, rather than the Examiner’s determination that the claims recite the above-identified abstract idea. For the above-discussed reasons, Appellants’ arguments have not persuaded us the Examiner erred in finding the claims recite an abstract idea.

Practical Application/Significantly more than Abstract Idea

The Examiner finds that the additional claimed elements do not amount to significantly more than the abstract idea. Final Act. 16–23. The Examiner identifies that the routing system and evaluator are described as software components and Appellants’ Specification does not identify any particular machine or computer to perform the function. *Id.* Further, the Examiner finds that the claims:

lack of additional elements are not sufficient to amount to significantly more than the judicial exception because they do not recite, for example: an improvement to another technology

or technical field; improvements to the functioning of the computer itself; applying the judicial exception with, or by use of, a particular machine; effecting a transformation or reduction of a particular article to a different state or thing; adding a specific limitation other than what is well-understood, routine and conventional in the field, or adding unconventional steps that confine the claim to a particular useful application; or other meaningful limitations beyond generally linking the use of the judicial exception to a particular technological environment (Note: this is not an exhaustive list). The determination that the elements do not amount to significantly more than the abstract idea is supported by the finding that the specification and the current claims are silent regarding any improvements to the functioning of the computer itself or the need for a particular machine on which to apply the abstract idea. No particular machines are explicitly involved in accomplishing the abstract idea as can be seen in specification par. [0029] mentions evaluators, but it is not clear that these are computing components, it is further not clear that there is any memory and storage device and as can be seen in the cited portion of the specification the invention uses a generic machine to perform the steps of the invention.

Final Act. 16–17.

Appellants argue that the independent claims when considered as a whole are directed to a transaction routing system. App. Br. 6–7; Reply Br. 4–5. Appellants argue:

The elements (router, contact center, user display, contact center evaluator, memories, etc.) are not merely a generic computer but are numerous elements uniquely structured to interact and function together to constitute a complex novel system which improves the technology and is thus far more than a generic computer and far more than merely an abstract idea. The invention solves a specific problem unique within a transaction routing system modifying the system's functionality.

App. Br. 5. Thus, Appellants argue representative claim 1 is directed to a multicomponent system, which contains these elements, none of which is a general-purpose computer. App. Br. 5; Reply Br. 4. Further, the Appellants argue that claims are directed to “a specific solution to a unique problem of making routing decisions, routing calls and making specialized and unique routing reports and, as such, the claim is much more than an abstract idea.” App. Br. 6.

With respect to whether the claim is directed to a practical application of the above-identified abstract idea, we are not persuaded of error in the Examiner’s rejection by these arguments. As discussed above, we concur with the Examiner that the claims recite an abstract idea. Representative claim 1 further recites, “a transaction routing system,” “a contact center, a memory for storing reports, a contact center evaluator,” and “a routing rules engine, a business rules evaluator, a router, and a user display.” Each of these elements is described by the function they perform, e.g., the contact center evaluator uses a business strategy model to create an influence diagram, and collects information. As identified by the Examiner, Appellants’ Specification does not identify any particular machine to perform these functions. The Specification describes these elements generally as modules and depicts them as boxes in the figures. *See, e.g.*, para. 29 and Figure 1 of Appellants’ Specification. Thus, we concur with the Examiner that many of the “structure” elements cited in Appellants’ arguments are construed as software modules (which are generically described as performing the functions discussed above³) and do not recite a

³ The Examiner is encouraged to consider whether there is sufficient disclosure to meet the requirements of 35 U.S.C. § 112 (f), *see* MPEP 2181

specific apparatus as argued. Rather, when construed in light of Appellants' Specification the apparatus is a general-purpose computer.⁴ Further, Appellants' arguments that the claim improves a problem in making routing decisions have not persuaded us that the claim recites a technical solution. App. Br. 5. As discussed above, the concept of routing is directed to an abstract idea, that the claim recites the use of a generically claimed router does not draw the claim to a technical field. Appellants' Specification does not identify a particular type of router or how it is improved. Further, Appellants' Specification does not discuss an improvement to the router, rather Appellants' Specification discusses the purpose of the system is to "illustrate the impact of strategies on business metrics with an ability to identify how the router selection outcomes meet the objectives of a business strategy." Spec. para. 2. Further, in as much as the recitation of a router may imply use of the telephone system, a step of applying an abstract idea to a telephone network is insufficient to confer patent eligibility. *See In re TLI Commc'ns LLC Patent Litig.*, 823 F.3d 607, 613 (Fed. Cir. 2016). Thus, we are not persuaded of error by Appellants' arguments that the claims are patent eligible as they represent a technological improvement or that they represent a practical application of an abstract idea or significantly more than the abstract idea.

We are not persuaded by Appellants' additional argument, that the claims do not tie up an abstract idea and as such are patent eligible. Reply Br. 5. This argument, directed to a preemption concern is not persuasive.

II (A). *See also Aristocrat Techs. Australia Pty Ltd. v. Int'l Game Tech.*, 521 F.3d 1328 (Fed. Cir. 2008).

⁴ *See, e.g.*, Appellants' Figure 2 which generally identifies the use a phone system (PBX) memory, printer, monitor to implement the system.

“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.”). As such, Appellants’ arguments directed to claims not tying up the abstract idea have not persuaded us of error.

In summary, Appellants’ arguments have not persuaded us of error in the Examiner’s determination that the claims are directed to an abstract idea; both to a method managing interactions between people (an abstract idea of organizing human activity) and collecting/gathering information and analyzing it (a mental processes). Further, Appellants’ arguments have not persuaded us that the Examiner erred in finding that the claims are not: directed to an improvement in the functioning of the computer or to other technology or other technical field; directed to a particular machine; directed to performing or affecting a transformation of an article to a different state or thing; directed to using a judicial exception in some meaningful way beyond linking the exception to a particular technological environment such that the claim as a whole is more than a drafting effort to monopolize the judicial exception.

Accordingly, we sustain the Examiner’s rejection of claims 1 through 6, 8, 10 through 21, 23 through 28, 30, 33 through 43 ,and 45 through 50 under 35 U.S.C. § 101 as being directed to patent ineligible subject matter.

Rejections 35 U.S.C. § 103

Appellants present several arguments directed to the Examiner's rejection of independent claims 1, 24, and 46 under 35 U.S.C. § 103. App. Br. 4–9. The dispositive argument is that the Examiner did not show the combination of the reference teaches “routing rule engine and a business rules evaluator to generate routing decisions, of reports illustrating routing decision relationships to resulting business metrics and link using singular direction, or user change of the relationships.” App. Br. 7.

Independent claim 1, limitation directed to displaying a “report which illustrates the business strategies, the routing decisions, and impact of the business strategies on resulting business metrics diagrammed along with links showing how the routing decisions meet objectives of the business strategies and links showing relationships between resulting business metrics with a singular direction for all metrics and which allow users to change the relationship between business metrics.” Independent claims 24 and 46 recite similar limitations. Thus, the claims recite allowing the users to change the relationship between business metrics.

The Examiner's rejection cites to Bapat to teach this limitation. Final Act 24–25 (citing pg. 211, col. 2, pg. 212 col 1, sec. 3.2, and pg. 216, col. 2, sec. 10). The Examiner in response to Appellants' arguments discussed above cites to Mengshoel. Answer 16 and 17. In this response, the Examiner cites to Mengshoel to teach a system in which there are metrics to analyze if the allocation of agents to calls in a call center is successful. Answer 17 (citing Mengshoel paragraphs 29, 104, and 105).

We have reviewed the Examiner's rejection, response in the Answer, the cited teachings of Bapat and Mengshoel and we do not find that the Examiner has sufficiently explained, nor is apparent to us, that the cited

portions of Bapat or Mengshoel teach allowing the user to change the relationship between business metrics as recited in each of the independent claims. Accordingly, we do not sustain the Examiner's rejection of independent claims 1, 24 or 46.

The Examiner has not shown that the teachings of the additional references used in the rejections of the dependent claims make up for the deficiency in the rejection of independent claims 1, 24, and 46. Accordingly, we similarly do not sustain the Examiner's obviousness rejections of claims 2 through 6, 8, 10 through 21, 23, 25 through 28, 30, 33 through 43, 45, and 47 through 50.

DECISION

We affirm the Examiner's rejection of claims 1 through 6, 8, 10 through 21, 23 through 28, 30, 33 through 43, and 45 through 50 under 35 U.S.C. § 101.

We reverse the Examiner's rejections of claims 1 through 6, 8, 10 through 21, 23 through 28, 30, 33 through 43, and 45 through 50 under 35 U.S.C. § 103.

Because we affirm at least one ground of rejection with respect to each claim on appeal, the Examiner's decision rejecting claims 1 through 6,

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8, 10 through 21, 23 through 28, 30, 33 through 43, and 45 through 50 is affirmed. *See* 37 C.F.R. § 41.50(a)(1).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED