UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte EDWARD DRAKE, MARK ARANA, and EVAN ACOSTA

Appeal 2018-005056
Application 13/944,806
Technology Center 3600

Before MAHSHID D. SAADAT, ALLEN R. MacDONALD, and
JOHN P. PINKERTON, *Administrative Patent Judges*.

MacDONALD, *Administrative Patent Judge*.

DECISION ON APPEAL[1]

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from a final rejection of
claims 1–23. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Illustrative Claim

Illustrative claim 1 under appeal reads as follows;

1. A method comprising:

receiving, at a server, a first key from a mobile device,
the mobile device comprising a mobile device proximity-based
device that receives the first key from a product and/or product

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[1] According to Appellants, the real party in interest is Disney Enterprises,
Inc. App. Br. 2.

package proximity-based device associated with a product
and/or a product package when the mobile device is within a
proximity to the product and/or product package proximity-
based device, the product and/or the product package being a
physical apparatus;

receiving, at the server, a second key from the mobile
device;

receiving, at the server from the mobile device, a third
key that is a hash token of the first key and the second key
generated by a checkout device after purchase of the product
and/or the product package in proximity to the checkout device;

receiving, at the server, the third key from the checkout
device after purchase of the product and/or the product package
in proximity to the checkout device;

determining, at the server, if the third key received from
the mobile device matches the third key received from the
checkout device; and

automatically providing, with the server, a cloud-based
entitlement to media content associated with the product and/or
the product package to a user identifier based upon the third key
received from the mobile device matching the third key
received from the checkout device without a user associated
with the user identifier requesting the cloud-based entitlement.

App. Br. 14 (Appendix A).

Rejections on Appeal

1. The Examiner rejected claims 1–23 under 35 U.S.C. § 101 for
being directed to patent-ineligible subject matter.[2] *See* Ans. 3.

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[2] We select claim 1 as representative. Separate patentability, in compliance
with 37 C.F.R. § 41.37(c)(1)(iv), is not argued for claims 2–23. *See* App.
Br. 7–9; *see also* Reply Br. 2–4. Accordingly, except for our ultimate
decision, the rejection of claims 2–23 under 35 U.S.C. § 101 is not discussed
further herein.

2. The Examiner rejected claims 1–5, 8–16, and 19–23 under
35 U.S.C. § 103(a) as being unpatentable over Rosenblatt et al.
(US 2010/0174599 A1; published July 8, 2010) ("Rosenblatt"), Hsu et al.
(US 2003/0069904 A1; published Apr. 10, 2003) ("Hsu"), and Khan
(US 2013/0325718 A1; published Dec. 5, 2003) ("Khan").[3] *See* Ans. 3.

3. The Examiner rejected claims 6–7 and 17–18 under 35 U.S.C.
§ 103(a) as being unpatentable over Rosenblatt, Hsu, Khan, and Schorr et al.
(US 2008/0172306 A1; published July 17, 2008) ("Schorr"). *See* Ans. 3.

Issues on Appeal

Did the Examiner err in rejecting claim 1 as being directed to patent-
ineligible subject matter?

Did the Examiner err in rejecting claim 1 as being obvious?

ANALYSIS

We have reviewed the Examiner's rejections in light of Appellants'
arguments that the Examiner has erred. We disagree with Appellants'
contention that the Examiner erred. Instead, we concur with the conclusions
reached by the Examiner. Except as noted below, we adopt as our own the
reasoning set forth by the Examiner in the Final Office Action and
Examiner's Answer.

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[3] The patentability of claims 2–23 is not separately argued from that of claim
1. *See* App. Br. 12. Accordingly, except for our ultimate decision, the
rejection of claims 2–23 under 35 U.S.C. § 103(a) is not discussed further
herein.

A. *Section 101 Case Law*

Under 35 U.S.C. § 101, a patent may be obtained for "any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof." The Supreme Court has "long held that this provision contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable." *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2354 (2014) (quoting *Ass'n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)). The Supreme Court in *Alice* reiterated the two-step framework previously set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012), "for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts." *Alice*, 134 S. Ct. at 2355. The first step in that analysis is to "determine whether the claims at issue are directed to one of those patent-ineligible concepts," such as an abstract idea. *Id.* The Court acknowledged in *Mayo* that "all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas." *Mayo*, 566 U.S. at 71. Therefore, we look to whether the claims focus on a specific means or method that improves the relevant technology or are instead directed to a result or effect that itself is the abstract idea and, otherwise, merely recite generic processes and machinery. *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1336 (Fed. Cir. 2016). If the claims are not directed to an abstract idea, the inquiry ends. Otherwise, the inquiry proceeds to the second step, in which the elements of the claims are considered "individually and 'as an ordered combination' to determine whether the additional elements 'transform the nature of the claim' into a

patent-eligible application." *Alice*, 134 S. Ct. at 2355 (quoting *Mayo*, 566 U.S. at 79, 78).

B. *Alice/Mayo — Step 1*

The Examiner determines claim 1 is directed to "the abstract idea of receiving information/data related to a purchase in order to automatically provide an extra benefit resulting from the purchase." Final Act. 6. Appellants contend claim 1 is not directed to an abstract idea under 35 U.S.C. § 101 because:

> [T]he pending claims are directed toward *the tangible technological problem of preventing mobile devices from falsely obtaining cloud-based entitlements*. For instance, the Specification states the following: "[a]s a result, a different mobile device is prevented from posing as the mobile device 106 to obtain entitlement as the different mobile device would not have the hash token." . . . That particular hash configuration is specifically recited in the pending claims as being the "third key that is a hash token of the first key and the second key generated by a checkout device." The "third key" is received by the server from both the "mobile device" and the "checkout device," as recited by the pending claims. A matching of the third key is performed at the "server," as recited by the pending claims, to authenticate cloud-based entitlement for the particular mobile device in question; such authentication solves the technological problem of mobile devices falsely obtaining cloud-based entitlements.
>
> Accordingly, the pending claims are directed toward *a tangible, technological solution for authenticating mobile devices for entitlements that uniquely differs from previous manual entitlement approaches*. Therefore, the pending claims are not directed toward an abstract idea.
>
> . . . .

Further, the Response explained that *the pending claims encompass a rule-based approach that improves the way a computer operates for similar reasons as McRO, Inc. v. Bandai Namco Games America Inc., 837 F.3d 1299 (Fed Cir. 2016)*
. . . .

The Advisory Action replied by stating "[t]he fact that the claims uses a rules-based approach to determine if the entitlement is provided adds little or nothing in determining the patentability of the claims as the use of similar/identical rule-based approaches were used for years in the retail industry." . . .

Yet, interestingly enough, the Advisory Action attempted to combine three prior art references – and even four prior art references for some claims – to arrive at the pending claims. *If the rules-based approach of the pending claims was as prevalent as stated by the Advisory Action, a single prior art reference could have easily been cited by the Advisory Action; that was not the case.*

The Advisory Action's characterization of the rule-based approach of the pending claims may stem from an inaccurate interpretation of what the rules are in the pending claims. For instance, the Advisory Action states that "[t]he 'rule' found in the claim is merely a requirement that the user submit the appropriate data required to obtain the entitlement." Yet, such an interpretation does not fully consider *the technological authentication-based rules of the pending claims that help prevent a mobile phone from falsely obtaining an entitlement* (*e.g.*, "receiving, at the server from the mobile device, a third key that is a hash token of the first key and the second key generated by a checkout device," "receiving, at the server, the third key from the checkout device after purchase of the product and/or the product package in proximity to the checkout device," and "determining, at the server, if the third key received from the mobile device matches the third key received from the checkout device").

As the pending claims provide specific rules for authenticating a mobile phone to receive a cloud-based entitlement, the pending claims *do not preempt all processes from performing cloud-based entitlement.* Thus, the pending

claims are directed toward patent eligible subject matter for similar reasons as *McRO*.

App. Br. 7–9 (Appellants' citations omitted; panel emphasis added).

The Examiner responds:

Examiner contends, that claims 1-23 are directed to ***the abstract idea of receiving information/data related to a purchase in order to automatically provide an extra benefit resulting from the purchase***. It is a ***well-established practice in the retail industry to offer entitlements (i.e. an extra benefit) as a result of a purchase***. A customer may purchase a product, fill in a form (*e.g.*, a rebate) providing information such as the customer name, provide proof that they purchased the product, and as a result obtain an entitlement from a merchant and/or a manufacture. It is also well-known that in some instances these entitlements can also be given to a particular individual. For example, an entitlement could be in the form of a rebate check made payable to the customer, or an entitlement could be added to a particular user account (*e.g.*, promotional access to cable channels for a certain subscriber, a refund added to a subscriber account, or other benefits added to subscriber accounts, etc.). ***The instant claims merely seek to automate the same practice used for years by individuals in the retail industry.*** It is important to note that the various "keys", recited in the claim(s), are not encryption keys (*e.g.*, used to encrypt or decrypt data). Rather, the specification describes that each "key" (*i.e.* the first, second, and third key) represents a certain type of data involved in a transaction and/or in providing the entitlement. The independent claims do not require that the first or second keys contain, or represent, a particular kind of data, rather, dependent claims 2-6 and 13-17 further define the data these keys may represent. ***Thus the fact that the comparison/matching involves keys (i.e. the third key) offers no technological improvement by itself as it merely describes a comparison of data.***

. . . .

. . . . [T]he limitations recited in the claims describe steps that are ***highly similar, if not identical, to the steps used by individuals in the retail industry***. Unlike *McRO*, ***Appellant[s***

are] . . . merely using the server as a tool to automate the same widely known steps, and there is no indication that the particular steps recited in the claims are the reason why this retail practice can now be automated. . . . It is clear that the instant claims are *not directed to a specific improvement to computer functionality.* Rather, they are *directed to the use of conventional or generic technology (i.e. a server).* . . . The specification *fails to provide any technical details for the tangible components, but instead predominately describes the method in purely functional terms.* Put differently, the described computing device(s) is/are merely a conduit for the abstract idea. Accordingly, it is concluded that the claims are directed to an abstract idea and are not directed to an improvement to computer functionality.

. . . .

. . . . The position taken by Appellant[s] that an invention automatically contains an inventive concept when the prior art rejection uses multiple references, or is allegedly non-obvious, is incorrect. . . . In other words, *novelty test should not belong in determining 101. Even if novelty were considered, the secondary references (i.e. Hsu and Khan) used in the rejection of claim 1 were only used to teach that the format of the data sent to the server was known, however, the sending and comparing of the data was all shown in a single reference.* Further, Appellant[s are] . . . not claiming a particular way to generate a hash token, rather, Appellant[s are] . . . merely describing the data, or its format, that is received at the server from the mobile device and/or checkout device.

Ans. 5–8 (emphasis added).

In response, Appellants continue to contend that claim 1 is not directed to an abstract idea under 35 U.S.C. § 101 because:

[T]he Examiner's Answer stated that "[c]ontrary to Appellant[s'] arguments, there is nothing in claim 1, or any claim for that matter, that prevents one mobile device from falsely obtaining cloud-based entitlements intended for another device." . . . *The Examiner's contention mischaracterizes claim 1, which clearly*

recites "automatically providing, with the server, a cloud-based entitlement to media content . . . based upon the third key received from the mobile device matching the third key received from the checkout device."

The Examiner's Answer goes on to inaccurately contend, via mere conjecture, that claim 1 would not prevent false cloud-based entitlement: ". . . any device that has a matching third key would be able to receive the entitlement because the claim fails to recite any limitations that verify and/or prevent an entitlement from being provided based upon information associated with a mobile device." . . . Appellant[s'] Specification says otherwise: " . . . , the mobile device 106 may provide the hash token to the cloud-based server 202 to obtain entitlement" and "[a]s a result, a different mobile device is prevented from posing as the mobile device 106 to obtain entitlement as the different mobile device would not have the hash token." . . .

. . . .

Accordingly, the Examiner's Answer does not dispute Appellants' argument that authentication of a mobile device to prevent false cloud-based entitlement is not an abstract idea. Rather, the Examiner's Answer contends that claim 1 does not actually prevent such cloud-based entitlement. As discussed above, claim 1 recites providing "cloud-based entitlement" with a server based upon matching a third key received from a mobile device with a third key received from a checkout device. *Such claim recitation is consistent with the identified problem of, and solution for, false cloud-based entitlement identified in Appellant[s'] Specification.*

Finally, the Examiner's Answer mischaracterizes the claims on Appeal as being directed to the " . . . abstract idea of receiving information/data related to a purchase in order to automatically provide an extra benefit resulting from the purchase." . . . As discussed above, *claim 1 specifically recites a "cloud-based entitlement" solution for the mobile device authentication problem described in Appellant[s'] Specification. In contrast, the abstract idea described by the Examiner's Answer does not mention such claim recitations or problem identified in Appellant[s'] Specification.*

. . . .

. . . . [T]he Examiner's Answer stated that "[u]nlike *McRO*, Appellant[s are] . . . merely using the server as a tool to automate the same widely known steps, and there is no indication that the particular steps recited in the claims are the reason why this retail practice can now be automated." . . . Again, ***the Examiner's Answer ignores the actual claim limitations and the problem identified in Appellant[s'] Specification. The Examiner's Answer gives the impression that the claims on Appeal are merely directed toward automating a rebate process typically performed by humans. Yet, as discussed above, claim 1 specifically recites providing "cloud-based entitlement" with a server based upon matching a third key received from a mobile device with a third key received from a checkout device.***

Accordingly, ***the solution of claim 1 is directed toward preventing false cloud-based entitlements by mobile devices rather than automating rebates typically performed by humans.***

The Examiner's Answer goes on to contend that "[t]he specification does not describe a new server, new mobile device, new checkout device, new device components, or a new physical combination thereof." . . . Yet, ***new hardware devices/components do not have to be described for claims to be directed toward patent eligible subject matter. For instance, McRO would not have met the standard set forth by the Examiner's Answer.***

The guidance provided by *McRO* is best summarized in two words: broad preemption. . . . The Appeal Brief explained that ***claim 1 recites authentication-based rules that are specific enough to not broadly preempt all, or a large quantity of, processes from performing cloud-based entitlement.*** . . . By way of contrast, the Examiner's Answer did not provide any reasons as to why the rules of claim 1 would broadly preempt processes performing cloud-based entitlement.

Reply Br. 2–4 (Appellants' citations omitted; panel emphasis added).

We are unpersuaded by Appellants' arguments. Upon review of Appellants' claims and Specification, and consistent with the Examiner's

findings, claim 1 is directed to an abstract idea of receiving information/data related to a purchase in order to automatically provide a benefit resulting from the purchase. *See* Final Act. 6. More specifically, claim 1 is directed to the collection and comparison of intangible data, which is a purely mental process that can either be done within the mind or using pen and paper, and, thus, is an abstract idea. *See CyberSource Corp. v. Retail Decisions, Inc.*, 654, F.3d 1366, 1370 (Fed. Cir. 2011) (holding that the mere collection and organization of data regarding credit cards numbers and Internet addresses was insufficient to impart patent-eligibility on the claims); *see also* Ans. 5 ("it is a well-established practice in the retail industry to offer entitlements . . . as a result of a purchase").

Appellants' argument that claim 1 is not directed to an abstract idea, and is instead directed toward a tangible technological problem of preventing mobile devices from falsely obtaining cloud-based entitlements, is not persuasive. *See* App. Br. 7–8. Claim 1 does not recite the specific technological solution argued by Appellants, but instead recites data manipulation steps performed by a generic computer performing generic computer functions.

In addition, we also disagree with Appellants' contention that claim 1 improves the way a computer operates, similar to the claims at-issue in *McRO, Inc. v. Bandai Namco Games America Inc.*, 837 F.3d 1299 (Fed. Cir. 2016), rather than a result or effect that itself is the abstract idea and merely invokes generic processes and machinery. *See* App. Br. 8–9. In *McRO*, the court held the claims were patent-eligible because the claims recited specific computer-implemented rules that allowed a computer to produce accurate and realistic lip synchronization and facial expressions in

animated characters that previously could only be produced by human animators. *See McRO*, 837 F.3d at 1313. As previously discussed, claim 1 fails to recite the technical details that distinguishes the claimed process of providing an entitlement associated with a purchase of a product from prior processes of providing an entitlement.

Regarding Appellants' argument that claim 1 does not preempt all processes from performing cloud-based entitlement, this argument is not persuasive, as the Federal Circuit has made clear that "the absence of complete preemption does not demonstrate patent eligibility" of a claim. *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015). Regarding Appellants' argument that the elements of claim 1 are not prevalent in the relevant industry because the Final Office Action relies upon multiple prior art references rather than a single prior art reference, this argument is not persuasive either, as the argument conflates the novelty and non-obviousness tests under 35 U.S.C. §§ 102, 103 with the patent-eligibility test under 35 U.S.C. § 101.

In light of the above, we agree with the Examiner's finding that claim 1 is directed to an abstract idea.

C. *Alice/Mayo* — *Step 2*

The Examiner determines claim 1 does not include "additional elements that [are sufficient to amount to] . . . 'significantly more' than the claimed judicial exception because the additional claim elements are simply general purpose computer system components which are recited at a high level of generality which provide general purpose functionality." Final

Act. 6. Appellants do not provide any specific arguments regarding this step of the *Alice* analysis. *See* App. Br. 7–9.

We agree with the Examiner that claim 1 does not include additional elements that are significantly more than the abstract idea. *See* Final Act. 6. More specifically, we agree with the Examiner that the devices (*i.e.*, "server," "mobile device," "checkout device") recited in claim 1 that are used in implementing the process are recited at a high level of generality and are recited as performing generic computer functions (*i.e.*, "receiving . . . a first key," "receiving . . . a second key," "receiving . . . a third key," "determining . . . if [a] . . . key . . . matches [another key] . . . ," and "automatically providing . . . a cloud-based entitlement to media content") routinely used in computer applications. *See* Final Act. 10. We also agree with the Examiner that claim 1 does not affect an improvement to another technology or technical field, and that claim 1 does not amount to an improvement to the functioning of an electronic device, which implements the abstract idea. *See* Final Act. 11. As correctly found by the Examiner, claim 1 merely links the use of the abstract idea to a particular technological environment, as claim 1 simply claims the use of a computer system (*i.e.*, "server") to implement the abstract idea. *See id.*

In light of the above, the Examiner correctly concluded that claim 1 does not amount to significantly more than an abstract idea.

D. *Section 103(a) Arguments*

Appellants raise the following argument in contending that the
Examiner erred in rejecting claim 1 under 35 U.S.C. § 103(a).

> Appellants respectfully submit that *one of ordinary skill
> in the art would not be motivated to hash the login information
> of a user (denoted the "third key" by the Final Office Action)
> as the user may then be unable to recognize that information
> upon login*. Further, the Final Office Action appears to change
> the third key to a "ticket" when discussing the combination of
> Rosenblatt and Hsu. . . . Such inconsistency emphasizes why
> only the benefit of hindsight – not motivation by those of
> ordinary skill in the art – has been used to formulate the Final
> Office Action's rationale for the combination of Rosenblatt and
> Hsu.

App. Br. 10 (emphasis added); *see also* Reply Br. 5.

We are not persuaded by this argument. Consistent with the
Examiner's findings, both Rosenblatt and Hsu describe methods of
purchasing and redeeming digital content, where a customer may make a
purchase using one device and subsequently collect their purchase using a
second device. *See* Ans. 10 (citing Rosenblatt ¶¶ 257–258; Hsu ¶ 4). To
address this scenario, Rosenblatt discloses receiving user login information
from a kiosk, subsequently receiving user login information from a handheld
device of a customer, and matching the user login information received from
the kiosk with the user login information from the handheld device. *See*
Ans. 10 (citing Rosenblatt ¶¶ 118, 142–145, 157–158, 166, 241, 252–259).
To also address this scenario, Hsu teaches a similar matching process, but
adds an additional layer of security by having a content server generate a
hash value, which is embedded into a ticket that is provided to a playback
device of a customer, and by subsequently having the playback device
present the ticket to the server, where the server calculates its own hash to

validate the inserted hash value of the ticket. *See* Ans. 10 (citing Hsu ¶ 41).

The Examiner provided a sufficient rationale for a person of ordinary skill in

the art to combine Rosenblatt and Hsu: to improve upon the matching

process taught by Rosenblatt by utilizing the hash values taught by Hsu. *See*

Ans. 10–11. Appellants' argument that one of ordinary skill in the art would

not be motivated to hash login information of a user because the user may

then be unable to recognize that information upon login is merely conclusory

and is not supported by evidence in the record. Such unsupported attorney

argument, is entitled to little probative value. *In re Geisler*, 116 F.3d 1465,

1470 (Fed. Cir. 1997); *In re De Blauwe*, 736 F.2d 699, 705 (Fed. Cir. 1984).

Appellants also raise the following argument in contending that the

Examiner erred in rejecting claim 1 under 35 U.S.C. § 103(a).

> Kahn is directed toward sending a PIN code from a server
> to a mobile device to ". . . inform the merchant/merchant device
> 110 that the purchase transaction is authorized." . . .
> Accordingly, Kahn teaches sending a PIN code from a server to
> a mobile device but does not teach receiving the PIN code at the
> server from the mobile device. In other words, Kahn is directed
> toward generating a hash token in the opposite direction than that
> of claim 1 (i.e., "receiving, at the server from the mobile device,
> a third key").
>
> ***The Final Office Action attempts to siphon off just the
> hash portion of Khan to combine with Rosenblatt and Hsu in
> the direction of Rosenblatt, but how one of ordinary skill in the
> art would have known to just take that particular portion from
> Khan and adapt it to the direction of the data flow in Rosenblatt
> has not been explained by the Final Office Action.*** As
> explained by *In re Stepan*, varying "all parameters" or trying
> "each of numerous possible choices until one possibly arrived at
> a success result" is not a reasonable expectation of success.

App. Br 11 (Appellants' emphasis and citations omitted; panel emphasis

added); *see also* Reply Br. 6.

We are not persuaded by this argument either. It is well settled that "a determination of obviousness based on teachings from multiple references does not require an actual, physical substitution of elements." *In re Mouttet*, 686 F.3d 1322, 1332 (Fed. Cir. 2012) (citations omitted). Nor is the test for obviousness whether a secondary reference's features can be bodily incorporated into the structure of the primary reference. *In re Keller*, 642 F.2d 413, 425 (CCPA 1981). Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. *Id.* As found by the Examiner, Rosenblatt teaches receiving information from both a kiosk and a handheld device and Khan teaches a PIN code that is a hash of store information, user information, and/or product information. *See* Ans. 11–12 (citing Rosenblatt ¶¶ 118, 142–145, 157–158, 166, 241, 252–259; Khan ¶ 35). The Examiner provided a sufficient rationale for a person of ordinary skill in the art to combine Rosenblatt and Khan: to improve upon the process taught by Rosenblatt by allowing multiple information components be hashed into a single information component used to authorize a transaction. *See* Ans. 12–13. Appellants' argument that there is no reasonable expectation of success in combining Rosenblatt, Hsu, and Khan is not supported by evidence in the record.

Accordingly, Appellants have not shown the Examiner erred in rejecting claim 1 under 35 U.S.C. § 103(a).

CONCLUSIONS

(1) The Examiner has not erred in rejecting claims 1–23 under 35 U.S.C. § 101.

(2) The Examiner has not erred in rejecting claims 1–23 under 35 U.S.C. § 103(a).

(3) Claims 1–23 are not patentable.

DECISION

We affirm the Examiner's rejection of claims 1–23 under 35 U.S.C. § 101.

We affirm the Examiner's rejections of claims 1–23 under 35 U.S.C. § 103(a).

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