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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DAVID GERARD LEDET¹

Appeal 2018-005555
Application 13/784,970
Technology Center 3600

Before BRADLEY W. BAUMEISTER, SHARON FENICK, and
RUSSELL E. CASS, *Administrative Patent Judges*.

BAUMEISTER, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner’s final rejection of claims 1–20, which constitute all of the pending claims. Appeal Br. 2. These claims stand rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. Final Action mailed Nov. 28, 2017 (“Final Act.”) 2–6. Claims 1–20 also stand rejected under 35 U.S.C. § 103(a) as being unpatentable over prior art, discussed further below. Final Act. 6–28. 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 Open Invention Network LLC. Appeal Brief filed January 2, 2018 (“Appeal Br.”) 3.

CLAIMED SUBJECT MATTER

Appellant describes the present invention as follows:

Disclosed is an apparatus and method of communicating with a wireless device to provide medical treatment analysis and other related features. One example method of operation may provide receiving a user information message from a wireless device at a remote server and processing the user information message to extract a user health condition indicator. The user health condition indicator may be compared to predefined health conditions stored in a databank and a predefined health condition that is related to the user health condition indicator may be identified. A treatment suggestion associated with the at least one predefined health condition may also be identified and a treatment response message may be transmitted to the wireless device that includes the at least one treatment suggestion and a potential appointment with a medical personnel facility.

Abstract.

THE 35 U.S.C. § 101 REJECTION

Independent claim 1 represents the appealed claims in relation to the § 101 rejection.² It is reproduced below with formatting modified for clarity and emphasis added to the claim language that recites an abstract idea:

1. A method comprising:
 - [i] a remote server *receiving a user information message* from a wireless device;
 - [ii] the remote server *processing the user information message to extract a user health condition indicator*;
 - [iii] the remote server *comparing the user health condition indicator to predefined health conditions stored in a databank*

² Appellant argues all of the claims together as a group. Appeal Br. 12–17. Accordingly, we select independent claim 1 as representative. 37 C.F.R. § 41.37(c)(1)(iv).

and identifying at least one predefined health condition that is related to the user health condition indicator;

[iv] *the remote server identifying at least one treatment suggestion associated with the at least one predefined health condition;*

[v] *the remote server transmitting a treatment response message to the wireless device comprising the at least one treatment suggestion;*

[vi] *the remote server transmitting an appointment request message to a medical personnel facility comprising the treatment response message and a request for a medical treatment appointment on behalf of the user;*

[vii] *the remote server receiving an appointment confirmation comprising an appointment data and an affirmation that an appointment is appropriate based on an analysis response from the medical personnel facility referencing content of the treatment response message; and*

[viii] *the remote server transmitting the appointment confirmation and corresponding appointment date to the wireless device.*

Principles of Law

A. SECTION 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.

However, the U.S. Supreme Court has long interpreted 35 U.S.C. § 101 to include implicit exceptions: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *E.g., Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014).

In determining whether a claim falls within an excluded category, we are guided by the Court’s two-step framework, described in *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66 (2012), and

Alice. *Alice*, 573 U.S. at 217–18 (citing *Mayo*, 566 U.S. at 75–77). 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 Court held that “a claim drawn to subject matter otherwise statutory does not become nonstatutory simply because it uses a mathematical formula.” *Diehr*, 450 U.S. at 187; *see also id.* at 191 (“We view respondents’ claims as nothing more than a process for molding rubber products and not as an attempt to patent a mathematical formula.”). Having said that, the 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.* (alterations in original) (quoting *Mayo*, 566 U.S. at 77). “[M]erely requir[ing] generic computer implementation[] fail[s] to transform that abstract idea into a patent-eligible invention.” *Id.*

B. USPTO SECTION 101 GUIDANCE

In January 2019, the United States Patent and Trademark Office (“USPTO”) published revised guidance on the application of 35 U.S.C. § 101. USPTO, 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) (“2019 Guidance”). Under the 2019 Guidance, we first look to whether the claim recites the following:

- (1) any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human activities such as a fundamental economic practice, or mental processes); and

(2) additional elements that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h)).

2019 Guidance, 84 Fed. Reg. 52–55.

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 is 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.

2019 Guidance, 84 Fed. Reg. 56.

Analysis

STEP 2A, PRONG 1:

Under step 2A, prong 1, of the 2019 Guidance, we first look to whether the claim recites any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human activities such as a fundamental economic practice, or mental processes). 84 Fed. Reg. 52–55.

Limitation [i] recites the step of “*receiving a user information message.*” Receiving a message reasonably can be characterized as a mental process. More specifically, receiving a message reasonably can be characterized as making an observation with the human mind. The 2019 Guidance expressly recognizes such mental processes as constituting a

patent-ineligible abstract idea. 84 Fed. Reg. 52. Accordingly, limitation [i] reasonably can be characterized as reciting a patent-ineligible abstract idea.

Limitation [ii] recites the step of “processing the user information message to extract a user health condition indicator.” Processing such user information messages reasonably can be characterized as a mental process that can be performed in the human mind. More specifically, such processing of information reasonably can be characterized as a mental evaluation or judgment. The 2019 Guidance expressly recognizes mental evaluations or judgments that can be performed in the human mind as constituting a patent-ineligible abstract idea. 84 Fed. Reg. 52. Accordingly, limitation [ii] reasonably can be characterized as reciting a patent-ineligible abstract idea.

Limitation [iii] recites “comparing the user health condition indicator to predefined health conditions stored in a databank and identifying at least one predefined health condition that is related to the user health condition indicator.” Limitation [iii] also can be characterized reasonably as reciting a mental evaluation or judgment that can be performed in the human mind. Like limitation [ii], then, limitation [iii] also can be characterized reasonably as reciting a patent-ineligible abstract idea.

Limitation [iv] recites “identifying at least one treatment suggestion associated with the at least one predefined health condition.” Identifying a treatment suggestion associated with a health condition reasonably can be characterized as a mental evaluation or judgment that can be performed in the human mind. Like limitations [ii] and [iii], then, limitation [iv] also can be characterized reasonably as reciting a patent-ineligible abstract idea.

Limitation [v] recites “transmitting a treatment response message . . . comprising the at least one treatment suggestion.” Transmitting a message that comprises a treatment suggestion reasonably can be characterized as a method of organizing human activity. More specifically, transmission of such types of messages reasonably can be characterized as engaging in teaching. The 2019 Guidance expressly recognizes teaching as a type of managing interactions between people and recognizes both acts as constituting a patent-ineligible abstract idea. 84 Fed. Reg. 52. Accordingly, limitation [v] reasonably can be characterized as reciting a patent-ineligible abstract idea.

Limitation [vi] recites “transmitting an appointment request message to a medical personnel facility comprising the treatment response message and a request for a medical treatment appointment on behalf of the user.” Transmitting these types of messages reasonably can be characterized as a certain method of organizing human activity. More specifically, message transmissions of this type reasonably can be characterized as a commercial interaction or business relation between a patient and doctor. The 2019 Guidance expressly recognizes commercial interactions and business relations as constituting a patent-ineligible abstract idea. 84 Fed. Reg. 52. Accordingly, limitation [vi] reasonably can be characterized as reciting a patent-ineligible abstract idea.

Limitation [vii] recites “receiving an appointment confirmation comprising an appointment data and an affirmation that an appointment is appropriate based on an analysis response from the medical personnel facility referencing content of the treatment response message.” Receiving a confirmation message reasonably can be characterized as a mental

observation that can be performed in the human mind. Like limitations [ii]–[iv], then, limitation [vii] also can be characterized reasonably as reciting a patent-ineligible abstract idea.

Limitation [viii] recites “transmitting the appointment confirmation and corresponding appointment date.” Transmitting appointment confirmations that include appointment-date information reasonably can be characterized as a method of organizing human activity. More specifically, such transmissions of information reasonably can be characterized as constituting a commercial or business interaction. Like limitations [vi] and [vii], then, limitation [viii] also can be characterized reasonably as reciting a patent-ineligible abstract idea.

For these reasons, each of limitations [i]–[viii] reasonably can be characterized as reciting patent-ineligible subject matter under step 2A, prong 1, of the 2019 Guidance.

STEP 2A, PRONG 2:

Under step 2A, prong 2, of the 2019 Guidance, we next analyze whether claim 1 recites additional elements that integrate the judicial exception into a practical application. 84 Fed. Reg. 52–55.

Appellant contends that

the claims are directed to an improvement in delivering treatment suggestions to remote patients and arranging appointments with medical personnel as well as emergency response where necessary. Accordingly, the claims feature[, e.g.,] a computing device that performs actions such receiving, processing, and comparing of information received from a remote patient.

Appeal Br. 12–13.

This argument is unpersuasive because delivering treatment suggestions to remote patients and arranging appointments with medical

personnel, as well as providing emergency responses, constitute some of the recited abstract ideas, as explained above in section 2a, prong 1, of the analysis. *See BSG Tech LLC v. BuySeasons, Inc.*, 899 F.3d 1281, 1290 (Fed. Cir. 2018) (“It has been clear since *Alice* that a claimed invention’s use of the ineligible concept to which it is directed cannot supply the inventive concept that renders the invention ‘significantly more’ than that ineligible concept.”); *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (Fed. Cir. 2016) (“[A] claim for a new abstract idea is still an abstract idea.”) (emphasis omitted); *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1168 (Fed. Cir. 2018) (“What is needed is an inventive concept in the non-abstract application realm.”).

Appellant then argues that

Applicant’s claims are clearly directed to a technological improvement in the field of medical analysis and response. The claims teach this improvement by providing accuracy and value in a plurality of response messages to a patient’s reported question or problem, actions not previously performable, as opposed to economic or other tasks for which a computer is merely used in its ordinary capacity as was the case described in *Alice*.

Id. at 15.

This argument is unpersuasive. In addition to being able to be characterized as reciting a patent-ineligible mental process, claim 1’s limitation [i]—“a remote server receiving a user information message from a wireless device”—reasonably can be characterized as merely constituting insignificant pre-solution activity:

An example of pre-solution activity is a step of gathering data for use in a claimed process, *e.g.*, a step of obtaining information about credit card transactions, which is recited as part of a claimed process of analyzing and manipulating the gathered

information by a series of steps in order to detect whether the transactions were fraudulent.

MPEP § 2106.05(g).

The same can be said for claim 1's limitation [vii]:

[vii] the remote server receiving an appointment confirmation comprising an appointment data and an affirmation that an appointment is appropriate based on an analysis response from the medical personnel facility referencing content of the treatment response message.

That is, limitation [vii] reasonably can be characterized as merely constituting insignificant pre-solution activity.

Similar characterizations can be made for claim 1's limitations [v], [vi], and [viii], which read as follows:

[v] the remote server transmitting a treatment response message to the wireless device comprising the at least one treatment suggestion;

[vi] the remote server transmitting an appointment request message to a medical personnel facility comprising the treatment response message and a request for a medical treatment appointment on behalf of the user; [and]

[viii] the remote server transmitting the appointment confirmation and corresponding appointment date to the wireless device.

These limitations do not add any meaningful limitations to the abstract idea because each reasonably can be characterized as merely being directed to the insignificant post-solution activity of transmitting data. *See, e.g., Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1241–42 (Fed. Cir. 2016) (holding that printing or downloading generated menus constituted insignificant extra-solution activity).

For these reasons, Appellant does not persuade us that claim 1 is directed to an improvement in the function of a computer or to any other

technology or technical field. MPEP § 2106.05(a). Nor is claim 1 directed to a particular machine or transformation. MPEP §§ 2106.05(b), (c). Nor has Appellant persuasively demonstrated that claim 1 adds any other meaningful limitations. MPEP § 2106.05(e). Accordingly, Appellant has not persuaded us that claim 1 integrates the recited abstract ideas into a practical application within the meaning of the 2019 Guidance. 84 Fed. Reg. 52–55.

STEP 2B:

Under step 2B of the 2019 Guidance, we next analyze whether claim 1 adds any specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field. 84 Fed. Reg. 56; MPEP § 2106.05(d).

The Examiner determines that the additional claim elements beyond the abstract idea comprise a server, a wireless device, a processor, a computer readable storage medium, and a transmitter. Final Act. 4. The Examiner determines that implementing medical information exchange processes in a computer environment merely entails using these generic computer elements for conventional activities that were well-understood in the wireless-communications field. *Id.*

Appellant argues

there is more than just mere manipulation of data as asserted by the Office. Arranging a medical appointment and perhaps emergency response due to an ailment, perhaps one not previously reported, based on an analysis of responses by a medical personnel facility and based on information received from the patient may involve several linked action steps, none abstract[,] and all tied to a tangible hardware structure. A response message is received from a medical personnel facility confirming that the appointment is appropriate and referencing

content of the treatment response message sent earlier by the remote server to the patient. This provides confirmation that the medical personnel facility acknowledges and understands the treatment response provided earlier to the patient. Therefore, Applicant respectfully disagrees that the claims merely recite mere data manipulation steps. Rather, Appellant's claims are directed to an improvement in generating responses to medical problems and perhaps emergencies. This is a feature not provided for in any prior art, and is not a generic computing function.

Appeal Br. 16–17.

Appellant's argument is unpersuasive. “The ‘novelty’ of any element or steps in a process, or even of the process itself, is of no relevance in determining whether the subject matter of a claim falls within the § 101 categories of possibly patentable subject matter.” *Diamond v. Diehr*, 450 U.S. 175, 188–89 (1981). A novel and nonobvious claim directed to a purely abstract idea is, nonetheless, patent ineligible. *Mayo*, 566 U.S. at 90; *see also Parker v. Flook*, 437 U.S. 584, 594–95 (1978) (holding claims to “a new and presumably better method for calculating alarm limit values,” of undisputed usefulness, to be directed to patent-ineligible subject matter).

Furthermore, Appellant's Specification supports the Examiner's determination that the additional elements are merely common computer components being used in well-understood, routine, and conventional manners. *See, e.g.*, Spec. ¶ 36 (explaining that the messages can include packets, frames datagram, or any equivalents thereof, and that “the application is not limited to a certain type of message” or “to a certain type of signaling”); *id.* ¶ 37 (explaining that any wireless user device may be employed); *id.* ¶¶ 38–40 (explaining that any type of data input may be

employed); *id.* ¶ 45 (explaining that various types of conventional computing devices may be used for transmitting and receiving data).

For these reasons, we determine that claim 1 does not recite additional elements that amount to significantly more than the judicial exception within the meaning of the 2019 Guidance. 84 Fed. Reg. 52–55; MPEP § 2106.05(d).

Accordingly, we sustain the Examiner’s rejection of claim 1 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. We, likewise, sustain the 101 rejection of claims 2–20, which Appellant does not argue separately. Appeal Br. 12–18.

THE 35 U.S.C. § 103(a) REJECTION

Claims 1–20 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Vesto (US 2011/0054934 A1; published Mar. 3, 2011), either alone (claims 1, 2, 5–9, 12–16, 19, and 20) or in view of other references that are not addressed on appeal (claims 3, 4, 10, 11, 17, and 18). Final Act. 6–28; Appeal Br. 18–40.

I.

Appellant argues that Vesto does not teach the following language of claim 1:

the remote server identifying at least one treatment suggestion associated with the at least one predefined health condition;

the remote server transmitting a treatment response message to the wireless device comprising the at least one treatment suggestion.

Appeal Br. 26.

More specifically, Appellant contends that

Vesto does not send a treatment response message to the patient based on a predefined health condition found in a databank. While Vesto performs many actions as illustrated in FIGs. 1 and 5 . . . , comparison of patient-submitted information about a present affliction with databank material as well as generation and sending of a treatment response message for the patient's viewing or other consumption is not taught by Vesto. Vesto is instead largely limited to dealing with known and previously treated ailments of the patient as clearly stated in paragraph [0026] of Vesto.

Id.

The Examiner, in turn, explains how Vesto teaches this disputed language:

paragraphs [0012] and [0078] of Vesto clearly discuss the [emergency response coordinator (ERC)] receiving symptom information from a patient (health condition indicator), processing the received symptoms based on symptom knowledge base information (searching predefined health conditions in a databank) to identify a care plan (predefined health condition/treatment options) and outputting the care plan to the patient (treatment response message). Paragraphs [0068]–[0070] discuss that [the] patient receives the care plan (i.e. instructions to go a nearby treatment center) and that subsequently or concurrently, the treatment center[] is engaged.

Ans. 8.

The cited passages of Vesto cited by the Examiner support the Examiner's findings:

Certain examples provide an emergency response coordination apparatus. The apparatus includes a memory to store at least patient information, symptom knowledge base information, and care provider information. The apparatus also includes a first communication interface to receive symptom information from a patient to be stored in the memory. The apparatus further includes a processor to process the received symptom

information based on stored patient information, symptom knowledge base information, and care provider information to determine a recommended care plan for the patient and to identify a care provider suitable to treat the patient's symptoms. Additionally, the apparatus includes a timer to track elapsed time beginning with receipt of symptom information to aid in determining a time window for patient treatment. The apparatus includes a second communication interface to generate an output of the recommended care plan for the patient and directions to the care provider suitable to treat the patient's symptoms.

Vesto ¶ 12.

The mobile device 515 can also be used to contact an emergency operator (e.g., 911 operator), for example. Symptoms can be automatically detected by the mobile device 515 and/or input by the user via the mobile device 515. Symptoms can indicate the patient is experiencing a heart attack or stroke, for example.

The ERC 505 provides directions to a nearest care center 520 and just-in-time information 530 to the mobile device 515.

Id. ¶¶ 68–69.

Appellant also argues that “Vesto does not send a treatment response message as an initial action before engaging third party services.” Appeal Br. 26–27. This argument is unpersuasive because it is not commensurate in scope with the language of claim 1. That is, the language of claim 1 does not limit the claimed method to require that the treatment response message be sent prior to engaging third party services.

For these reasons, Appellant's arguments do not persuade us of error in the Examiner's analysis of the disputed limitations discussed above.

II.

Appellant also disputes that Vesto teaches the following, additional language of claim 1:

the remote server receiving an appointment confirmation comprising an appointment data and an affirmation that an appointment is appropriate based on an analysis response from the medical personnel facility referencing content of the treatment response message.

Appeal Br. 22, 26.

More specifically, Appellant argues

Vesto does not in FIG. 1, FIG. 5, or in any of the cited paragraphs teach or suggest a server receiving an appointment confirmation comprising an appointment data and an affirmation that an appointment is appropriate *based on an analysis response from the medical personnel facility referencing content of the treatment response message*.

Id. (emphasis added).

Appellant's arguments are unpersuasive. As a threshold matter, we note that the disputed limitation does *not* recite that the received affirmation that an appointment is appropriate *includes* an analysis response referencing content of the treatment response message. Rather, the limitation more broadly recites that the affirmation "*is based on an analysis response . . . referencing content of the treatment response message.*" Claim 1 (emphasis added).

Furthermore, claim 1 recites a method from the perspective of the remote server. Claim 1 does not affirmatively recite any steps that are undertaken by the medical personnel facility. That is, claim 1 does not affirmatively recite the method by which the medical personnel facility decides that the appointment is appropriate or affirmatively recite the factors

upon which this determination is based. The fact that the medical personnel facility bases the affirmation on an analysis response referencing content of the treatment response message merely constitutes, from the standpoint of the remote server, an intangible property of the final-product affirmation that the remote server receives.

As such, the language relating to the intangible property of how the transmitted affirmation was produced does not patentably distinguish or otherwise limit the penultimate limitation of claim 1. This limitation merely requires that the remote server receive an appointment confirmation, and that this confirmation comprises appointment data and the final-product affirmation indicating that an appointment is appropriate. The Examiner has set forth a factual basis supporting the determination that Vesto does provide an affirmation indicating that an appointment is appropriate:

Vesto does teach providing medical personnel or treatment centers with patient symptoms and other vital information and that the treatment center or provider can transmit information back to the ERC to coordinate the patient's care, including transportation to the treatment facility (paras. 30–34 and 69–72). Further, emergency service providers can diagnose a condition, such as a stroke, based on the transmitted patient symptoms (para. 27). Receiving information from the treatment center to coordinate the patient's care, including the patient's transportation to the treatment facility, suggests that the patient's impending arrival (an emergency appointment) is deemed appropriate by the treatment center.

Final Act. 9–10.

To summarize, then, the Examiner has established a prima facie showing of unpatentability. Furthermore, Appellant's arguments regarding what information the affirmation must be based upon are not commensurate in scope with the claim, as currently written. As such, Appellant's

arguments regarding what the affirmation is based on are not persuasive of error in the rejection.

Conclusions Regarding the Obviousness Rejection

For the above reasons, Appellant has not persuaded us of error in the obviousness rejection of independent claim 1. Appellant separately argues independent claims 8 and 15, but these arguments are substantially similar to the arguments Appellant sets forth in relation to claim 1. Appeal Br. 28–40.

Accordingly, we sustain the obviousness rejection of independent claims 1, 8, and 15. We also sustain the obviousness rejections of dependent claims 2, 5–7, 9, 12–14, 16, 19, and 20, which Appellant does not argue separately. App. Br. 41; 37 C.F.R. § 41.37(c)(1)(iv).

CONCLUSION

In summary:

Claims Rejected	Basis	References	Affirmed	Reversed
1–20	§ 101		1–20	
1, 2, 5–9, 12–16, 19, and 20	§ 103	Vesto	1, 2, 5–9, 12–16, 19, and 20	
3, 10, and 17	§ 103	Vesto and Shillingburg	3, 10, and 17	
4, 11, and 18	§ 103	Vesto, Shillingburg, and Shaffer	4, 11, and 18	
Overall Outcome			1–20	

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)(1). 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED