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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* PETER D. KOICHEVAR and RANDALL RAY

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Appeal 2018-006003  
Application 13/479,920  
Technology Center 3600

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Before JOSEPH L. DIXON, JUSTIN BUSCH, and JAMES W. DEJMEK,  
*Administrative Patent Judges.*

DIXON, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>1</sup> appeals from the Examiner's decision to reject claims. *See* Final Act. 1. An oral hearing was held on February 25, 2020. A transcript of the hearing will be placed in the record in due course. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> We use the word Appellant to refer to "applicant" as defined in 37 C.F.R. § 1.42 (2017). Appellant identifies the real party in interest as Peter D. Kochevar and Randall Ray. (Appeal Br. 2.)

CLAIMED SUBJECT MATTER

The claims are directed to a facility safety and compliance information system and Web-based application for managing information about deficiencies and repairs to facilities. (Spec. ¶ 2.) Claim 1, reproduced below, is representative of the claimed subject matter:

1. A facility safety and compliance information system for the automated management of information about deficiencies and repairs to a facility, said system comprising:

a server connected via a network to one or more client user devices;

a database module resident on said server that stores wall or floor penetration data, safety, and compliance information;

*an interface generated by a processor of said server and sent via said network to said one or more client user devices, said interface providing access to said database for use by said client users, said interface is viewable on said client device configured with a display;*

a field survey and repair module resident on said server configured to receive via said network from said one or more client user devices user inputted information using said interface, the inputted information forming a survey and repair report regarding wall or floor penetration deficiencies, wall or floor penetration breaches, and repairs related to the wall or floor penetration breaches for said facility, and when the need for the repair was discovered, location and type of repair performed, and when the repair was performed by the client user;

wherein said field survey and repair module is operative in an online mode on said one or more client devices or in an offline mode when the online mode is unavailable, information inputted by the client user is put in a local cache memory on said one or more client devices, and when said network is available the information inputted in the offline

mode is automatically uploaded from the local cache on the client device to said database module on said server of the facility safety and compliance information system: and

*an electronic documentation request* feature on said interface for said client users *to request electronic documentation for a set of products and materials used in a repair of a particular wall or floor penetration deficiency or breach from one or more suppliers and manufacturers for automatic inclusion into the survey and repair report, where the survey and repair report comprises a written description of the particular wall or floor penetration deficiency within said facility, a written description of the repairs thereof, before photographs of the particular wall or floor penetration deficiency, after photographs of the repairs, and repair documentation of fire integrity engineering reports from the suppliers and manufacturers.*

#### REFERENCES

The prior art relied upon by the Examiner is:

Sinisi	US 2004/0128613 A1	July 1, 2004
Gill et al.	US 2012/0224057 A1	Sept. 6, 2012

#### REJECTIONS<sup>2</sup>

Claims 1–4, 7–12, 15–18, and 20 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to a judicial exception (i.e. a law of nature, a natural phenomenon, or an abstract idea) without significantly more.

Claims 1–4, 7–12, 15–18, and 20 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Sinisi in view of Gill.

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<sup>2</sup> The Examiner has withdrawn the rejection under 35 U.S.C. § 112, first paragraph. (Ans. 3.)

OPINION

*35 U.S.C. § 101*

*I. Claims 1–4, 7–12, 15–18, and 20*

With respect to patent eligibility of independent claims 1 and 20, Appellant does not set forth separate arguments for patentability of the claims. Therefore, we select independent system claim 1 as the representative claim for the group and will address Appellant’s arguments thereto. 37 C.F.R. § 41.37(c)(1)(iv).

*A. Legal Principles*

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 Supreme Court has long interpreted 35 U.S.C. § 101 to include implicit exceptions: “[I]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 Supreme Court’s two-step framework, described in *Mayo* and *Alice*. *Id.* at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 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, 69 (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. (15 How.) 252, 267–68 (1854))); 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 187; *see also id.* at 192 (“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

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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 (quotation marks 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 U.S. Patent and Trademark Office (“USPTO”) published revised guidance on the application of § 101. USPTO’s January 7, 2019 Memorandum, 2019 Revised Patent Subject Matter Eligibility Guidance (“Memorandum”). Under that guidance, we first look to whether the claim recites:

- (1) any judicial exceptions, 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) additional elements that integrate the judicial exception into a practical application (*see* Manual of Patent Examining Procedure (“MPEP”) § 2106.05(a)–(c), (e)–(h)).

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.

*See Memorandum.*

*B. The Examiner's Conclusions and Appellant's Arguments*

The Examiner concludes the present claims recite an “abstract idea for managing wall or floor penetration information about deficiencies and repairs to facilities,” which is one of certain methods of organizing human activity. (Final Act. 12; Ans. 5 (concluding claims are directed to the abstract idea of managing information regarding deficiencies and repairs to a facility).) The Examiner also determines the present claims do not amount to significantly more than an abstract idea itself because the abstract idea is implemented using additional elements that are well-understood, routine, and conventional. (Final Act. 12–15; Ans. 7–9 (citing Spec. ¶¶ 9, 13, 15, 37).)

Appellant contends although the claim recites the abstract idea of comparing and organizing data for transmission, the claim is patent eligible because it recites additional limitations that, when considered as an ordered combination, demonstrate a technologically rooted solution to an Internet-centric problem and thus amounts to significantly more than comparing and organizing information for transmission. (Appeal Br. 19–20; Reply Br. 2–3.)

Appellant argues that the rejection of claims under 35 U.S.C. § 101 is unsupported by factual evidentiary findings as required by *Berkheimer*. (Reply Br. 2–3 (citing *Berkheimer v. HP Inc.*, 881 F.3d 1360 (Fed. Cir. 2018)).) Appellant further contends that the “claims recite physical components and include physical transformations sufficient to remove the

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claims from a full review under 35 U.S.C. § 101.” (Reply Br. 3.) Appellant further contends that the claims recite a system of integrated physical components including a server, user devices, an interface, a repair report, photographs, and physical repair to a facility and the rejection ignores physical components and physical transformations.” (Reply Br. 3.) We disagree with Appellant.

We note that the language of independent claim 1 does recite physical elements but does not recite any physical transformations.

Appellant further argues the present claims are necessarily rooted in technology to solve problems specifically arising in the realm of technology. (Appeal Br. 18–22 (citing *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014)); Reply Br. 4–5 (citing Spec. ¶¶ 12–13).)

*C. Discussion*

*1. Step 2A, Prong 1*

Patent eligibility under 35 U.S.C. § 101 is a question of law that is reviewable *de novo*. See *Dealertrack, Inc. v. Huber*, 674 F.3d 1315, 1333 (Fed. Cir. 2012). We, therefore, conclude the emphasized portions of claim 1, reproduced above, recite commercial interactions including sales activities or business relations because claim 1<sup>3</sup> requires data processing, management

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<sup>3</sup> Claim 1, reproduced above with emphases, recites similar features as independent claim 20. Appellant does not argue claims 2–4, 7–12, 15–18 and 20 separately, but asserts the § 101 rejection of those claims should be withdrawn for at least the same reasons as argued for independent claim 1. (Appeal Br. 12–22.) We, therefore, group claims 1–4, 7–12, 15–18 and 20, and 25 together.

of information about deficiencies and repairs to a facility.<sup>4</sup> The Examiner further maintains:

The claim(s) as a whole is based on conventional technology which is a fundamental economic practice (i.e. storing, providing, displaying, receiving, uploading, reporting), and the claim(s) as a whole further describe concepts relating to commerce, such as agreements between people in the form of contracts, legal obligations, and business relations as in *[buySAFE]* (. . . *safety and compliance information . . . client users*); related to an idea of itself having common characteristics to *[FairWarning]* ‘collecting and analyzing information to detect misuse and notifying a user when misuse is detected (“ . . . a database . . . stores wall or floor penetration data, safety and compliance information . . . survey and repair report . . . wall or floor penetration deficiencies . . . wall or floor penetration breaches, and repairs related to the wall or floor penetration breaches for a facility . . . when the repair was discovered ... location . . . type . . . when the repair was performed . . .”); and similar to certain methods of organizing human activity as in *[Electric Power Group]* ‘collecting information, analyzing it and displaying certain results of the collection and analysis.

(Final Act. 13.) Although the Examiner further maintains that the claimed invention corresponds to multiple of the “certain methods of organizing human activity” (Ans. 5–7), we determine that the claimed invention recites “managing information regarding deficiencies and repairs to a facility,” which is a mental process and thus an abstract idea. Concepts performed in the human mind (including an observation, evaluation, judgment, opinion.) See Memorandum 52. Alternatively, the claimed invention may recite one

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<sup>4</sup>Additionally, under the broadest reasonable interpretation, we note that the language of independent claim 1 is drafted using alternative language of a server based hardware which requires only offline acquisition and recordation of deficiency and repair data to a single facility based upon a single interface on one client device.

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of the certain methods of organizing human activity. Certain methods of organizing human activity include fundamental economic principles or practices (including hedging, insurance, mitigating risk); commercial or legal interactions (including agreements in the form of contracts; legal obligations; advertising, marketing or sales activities or behaviors; business relations); managing personal behavior or relationships or interactions between people (including social activities, teaching, and following rules or instructions). *See* Memorandum 52.

According to the Memorandum, commercial interactions including sales activities or business relations fall into the category of certain methods of organizing human activity. *See* Memorandum. Moreover, those certain methods of organizing human activity are a type of an abstract idea. *See id.*; *see also Smart Sys. Innovations, LLC v. Chicago Transit Auth.*, 873 F.3d 1364, 1372 (Fed. Cir. 2017) (verifying payment information, as well as “financial transactions . . . and data collection related to such transactions” “are directed to an abstract idea under Alice step one.”); *buySAFE*, 765 F.3d at 1352–54 (Claims reciting sending and receiving communications over a computer network to facilitate online commercial transactions are directed to “contractual relations, which are intangible entities” and “constitute[] ‘a fundamental economic practice long prevalent in our system of commerce.’”).

We, therefore, agree with the Examiner’s conclusion that the present claims recite ineligible subject matter of a mental process or certain methods of organizing human activity. (Final Act. 12–13; Ans. 6–7.) We, therefore, disagree with Appellant’s argument the Examiner fails to identify clearly the abstract idea and, accordingly, does not establish a prima facie case of subject matter ineligibility. (Appeal Br. 17.) Because the present claims

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recite a mental process or certain methods of organizing human activity (i.e., an abstract idea), we proceed to prong 2.

2. *Step 2A, Prong 2*

The present claims do not integrate the abstract idea into a practical application because they do not impose any meaningful limits on practicing the abstract idea. In particular, we disagree with Appellant’s argument that the present claims recite an improvement in computer-related technology.

Claim 1 recites in the last phrase “electronic documentation request feature” and further includes “automatic inclusion” into the report, which Appellant contends was “IMPOSSIBLE in the manual prior art of firestopping documentation.” Appellant further contends that this eliminates the step of obtaining documentation from a material supplier and placing it into the building firestopping book that is required by regulation to be available for fire marshal inspection and that the claimed solution that is “necessarily rooted in computer technology,” which could not be addressed without a computer-based system. (Appeal Br. 21.)

We disagree with Appellant’s argument and find that the claim language merely initiates an unclaimed process with a “request,” and the actual inclusion into the unclaimed “facility book” is not part of the claimed invention. (*See* dependent claim 9.)

Appellant does not identify persuasively how the Specification sets forth an improvement in technology. The USPTO October 2019 Patent Eligibility Guidance Update (“Update”, available at [https://www.uspto.gov/sites/default/files/documents/peg\\_oct\\_2019\\_update.pdf](https://www.uspto.gov/sites/default/files/documents/peg_oct_2019_update.pdf)), addresses how we consider any evidence that is presented to us. The Update states:

[d]uring examination, the examiner should analyze the “improvements” consideration by evaluating the specification and the claims to ensure that a technical explanation of the asserted improvement is present in the specification, and that the claim reflects the asserted improvement. Generally, examiners are not expected to make a qualitative judgment on the merits of the asserted improvement. *If the examiner concludes the disclosed invention does not improve technology, the burden shifts to applicant to provide persuasive arguments supported by any necessary evidence to demonstrate that one of ordinary skill in the art would understand that the disclosed invention improves technology.* Any such evidence submitted under 37 C.F.R. § 1.132 must establish what the specification would convey to one of ordinary skill in the art and cannot be used to supplement the specification. For example, in response to a rejection under 35 U.S.C. § 101, an applicant could submit a declaration under § 1.132 providing testimony on how one of ordinary skill in the art would interpret the disclosed invention as improving technology and the underlying factual basis for that conclusion.

Update 13 (footnote omitted, emphasis added).

In this case, the Examiner concludes the present claims do not recite an improvement to technology. (Final Act. 3, 5, 7–8; Ans. 4–6, 8–9.) Consequently, we focus on any evidence Appellant cites pursuant to the Update. Here, Appellant only cites paragraphs 12 and 13 in the Specification as a building maintenance tool, but the claim does not recite maintenance and only acquires data. The Specification merely identifies that the “facility safety and compliance information system leverages computer information system, network, and communication technologies for automating the collection of data and the generation of regulatory and compliance documentation.” (Spec. ¶ 13.; Reply Br. 4–5.) Therefore, the

arguments in the Appeal Brief and Reply Brief are merely attorney argument unsupported by evidence.<sup>5</sup> (Reply Br. 4–5.)

In addition, we agree with the Examiner’s position that the claims are not an improvement to computer technology. (Ans. 7–8.) In *Enfish*,<sup>6</sup> the Federal Circuit considered how the present invention was superior to the technology in the prior art. That is, the court considered “the specification’s emphasis that ‘the present invention comprises a flexible, self-referential table that stores data,’” “[t]he specification also teaches that the self-referential table functions differently than conventional database structures,” and “traditional databases, such as ‘those that follow the relational model and those that follow the object oriented model[,]’ are inferior to the claimed invention.” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d at 1337 (citations omitted). Moreover, in *Enfish*, “[t]he structural requirements of current databases require a programmer to predefine a structure and subsequent [data] entry must conform to that structure,’ [and] the ‘database of the present invention does not require a programmer to preconfigure a structure to which a user must adapt data entry.’” *Id.* Based on the foregoing, the court determined the claims “achieve[d] other benefits over conventional databases, such as increased flexibility, faster search times, and smaller memory requirements.” *Id.* Unlike the claims of *Enfish*, the present claims do not recite an improvement in computer-related technology.

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<sup>5</sup> It is well settled that mere attorney arguments and conclusory statements, which are unsupported by factual evidence, are entitled to little probative value. *In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997); *see also In re Pearson*, 494 F.2d 1399, 1405 (CCPA 1974) (attorney argument is not evidence).

<sup>6</sup> *Enfish, LLC v Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016)

Instead, the present claims recite an abstract idea as discussed *above*, or at best, improving an abstract idea—not a technological improvement. The Specification indicates the additional elements (server, database, processor, field survey and repair module, cache memory, client device) recited in the present claims are merely generic computer components used to implement the abstract idea. (Ans. 10–11 (citing Spec. ¶¶ 9, 13, 15, 37).)

Further, the generic computer components, individually and in combination, do not integrate the judicial exception into a practical application.

Additionally, “a claim for a *new* abstract idea is still an abstract idea.” *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (Fed. Cir. 2016) (emphasis added). “[U]nder the *Mayo/Alice* framework, a claim directed to a newly discovered law of nature (or natural phenomenon or abstract idea) cannot rely on the novelty of that discovery for the inventive concept necessary for patent eligibility.” *Genetic Techs. Ltd. v. Merial L.L.C.*, 818 F.3d 1369, 1376 (Fed. Cir. 2016) (citations omitted).

Appellant does not make any other arguments pertaining to step 2A, prong 2. Because the present claims recite an abstract idea that is not integrated into a practical application, we proceed to Step 2B.

### 3. *Step 2B*

We agree with the Examiner’s determination that the additional elements implementing the abstract idea are well-understood, routine, and conventional. Final Act. 4–6; Ans. 5 (citing *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350 (Fed. Cir. 2014); *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359 (Fed. Cir. 2015); *Bancorp Servs., LLC v. Sun Life Assurance Co.*, 687 F.3d 1266, 1278 (Fed. Cir. 2012).

The claim recites a server, a database module, a survey and repair module, a network, a client user device, a cache memory, and a local cache memory.

The Specification discloses the claimed additional elements as well-understood, routine, and conventional computer, network, and user interface elements:

The system 200 includes multimedia devices 202 and desktop computer devices 204 configured with display capabilities 214. The multimedia devices 202 are optionally mobile communication and entertainment devices, such as cellular phones and mobile computing devices that are wirelessly connected to a network 208. The multimedia devices 202 have video displays 218 and audio outputs 216. The multimedia devices 202 and desktop computer devices 204 are optionally configured with internal storage, software, and a graphical user interface (GUI) for carrying out elements of the facility safety and compliance information system according to embodiments of the invention. The network 208 is optionally any type of known network including a fixed wire line network, cable and fiber optics, over the air broadcasts, satellite 220, local area network (LAN), wide area network (WAN), global network (e.g., Internet), intranet, etc. with data/Internet capabilities as represented by server 206. Communication aspects of the network are represented by cellular base station 210 and antenna 212. In a preferred embodiment, the network 208 is a LAN and each remote device 202 and desktop device 204 executes a user interface application (e.g., Web browser) to contact the server system (e.g., main FIS backend 100 of FIG. 1) 206 through the network 208. Alternatively, the remote devices 202 and 204 may be implemented using a device programmed primarily for accessing network 208 such as a remote client.

(Spec. ¶ 37.) The Specification further discloses:

FIS, a complete version of the FIS backend, including the database management system and the Web application server, is installed by client users on their portable computing and

communications devices to form a local FIS backend such as laptop computers, tablet computers, or smart cellular telephones. The local FIS backends are termed “satellites” to distinguish the local FIS backends from the main FIS backend. A satellite and the main FIS backend are in communication with one another via a virtual peer-to-peer network layered on top of the Internet when a client user’s computing and communications device in the field has Internet connectivity. The operation of the peer-to-peer network is transparent to the client user, who sees a single system with a single point of entry or interface to the FIS. The point of entry to the FIS is an access program that installs on the client device that initiates access to the FIS.

(Spec. ¶ 24.) The Specification further discloses “[p]ortable client devices might be laptop computers, tablet computers, smart cellular telephones, or other computing and communications devices inspect.” (Spec. ¶ 21.) The Specification does not identify details of the cache memory, but storage is resident on the client device. (Spec. ¶ 28.) The Specification also discloses that the “portable client devices connect to the Internet wirelessly via local area networks (LAN), wide area networks WAN, Wifi, WIMAX, satellite, cellular telephone network, or other known or available wireless network connections.” (Spec. ¶ 21.)

The Examiner maintains that “[n]othing in the claims, understood in light of the specification, requires anything other than off-the-shelf, conventional computer, network, and display technology for storing, providing, displaying, receiving, uploading, and reporting the desired information (see appellant’s disclosure at least ¶9, ¶13, ¶15, ¶37[ ]).”

(Ans. 10–11.)

We agree with the Examiner that Appellant’s Specification indicates these additional elements were well-understood, routine, and conventional components because it describes them at a high level of generality and in a

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manner that indicates that they were sufficiently well-known. Moreover, the additional elements recited in the present claims, analyzed individually or in combination, does not result in the claim, as a whole, amounting to significantly more than the judicial exception.

We also disagree with Appellant's argument that the Examiner fails to provide clear and convincing evidence to support the finding that the additional elements implementing the abstract idea are well-understood, routine, and conventional. (Reply Br. 3–4.) Indeed, as noted above, the Examiner provides citations to the Specification (Ans. 10–11 (citing Spec. ¶¶ 9, 13, 15, 37)) and the Specification supports the Examiner's determination in this regard because it explains that the additional elements are generic computer components.

Appellant does not argue claims 2–4, 7–12, 15–18, and 20 separately, but asserts the § 101 rejection of those claims should be withdrawn for at least the same reasons as argued for independent claim 1. (Appeal Br. 11–22.) Accordingly, we sustain the Examiner's rejection of: (1) independent claims 1 and 20; and (2) dependent claims 2–4, 7–12, and 15–18 under 35 U.S.C. § 101. We have only considered those arguments that Appellant actually raised in the Briefs. Arguments Appellant could have made, but chose not to make, in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv).

### *35 U.S.C. § 103*

With respect to obviousness of independent claims 1 and 20, Appellant does not set forth separate arguments for patentability of the claims. Therefore, we select independent method claim 20 as the

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representative claim for the group and will address Appellant's arguments thereto. 37 C.F.R. § 41.37(c)(1)(iv).

At the outset, we note that representative claim 20 is a method which does not recite online and offline modes of operation. Additionally claim 20 is drafted based upon a "server" functionality where the client device is used as an input device for data via an interface. We further note claim terms are to be given their broadest reasonable interpretation, as understood by those of ordinary skill in the art and taking into account whatever enlightenment may be had from the Specification. *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997). "In the patentability context, claims are to be given their broadest reasonable interpretations . . . limitations are not to be read into the claims from the specification." *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993) (citations omitted). Here, the language of representative independent claim 20 merely sets forth broad limitations.

We find the language of representative independent claim 20 to be broader than Appellant's proffer in their arguments because there are no "books" and "updating a survey" required in the claim language. Additionally, in representative independent claim 20 only "one client user device" is impliedly required. Moreover, the "field survey and repair module resident on said server and updating said database" is drafted using alternative language where the interface is operative in either an "online mode on said one or more client devices or in an offline mode" as in independent claim 1. Consequently, either an offline or an online mode is sufficient to meet the language of representative independent claimed 20.

We find that the Sinisi reference discloses an off-line mode for inputting mobile data collection in which a handheld device is used to collect and integrate multiple types of data, such as data related to building

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inspections. (Sinisi ¶ 3.) Additionally, the Sinisi reference discloses that the central processing system 14 can provide updated firmware for templates for data interface to the handheld devices 12. (Sinisi ¶¶ 45, 51, 60.)

Appellant repeats the Examiner’s rejection and maintains that the Examiner has not made a proper showing of obviousness of “automatically updating the survey, as well as the element of the duration of time in terms of comparing before and after photographs of the repaired wall or floor penetration deficiency.” (Appeal Br. 28.) Appellant further contends that “all claims are novel and allowable over Sinisi and other cited prior art.” (Appeal Br. 29.) But we note that the claims are rejected based upon obviousness. Appellant further argues that “Sinisi is wholly silent as to the claimed recitation of automatically updating the survey, as well as the element of the duration of time in terms of comparing before and after photographs of the repaired wall or floor penetration deficiency.” (Appeal Br. 29.)

The Examiner maintains that Appellant’s arguments are not commensurate in scope with the express claim language, and the Examiner further details the portions of the Sinisi and Gill references as they apply to the claimed invention. (Ans. 12–17.) We agree with the Examiner. Arguments must be commensurate in scope with the actual claim language. *In re Self*, 671 F.2d 1344, 1348 (CCPA 1982); see *In re Hiniker Co.*, 150 F.3d 1362, 1369 (Fed. Cir. 1998) (“[The] proffered facts . . . are not commensurate with the claim scope and are therefore unpersuasive.”). Therefore, we conclude Appellant has not shown error in the Examiner’s factual findings or conclusion of obviousness of representative independent claim 20.

We note that the language of independent claim 20 recites “storing said user inputted information in a field survey and repair module resident

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on said server and updating said database in response to the client user input and generating a survey and repair report” and the Sinisi reference teaches and suggests inputting data and updating the database. (Sinisi ¶ 57.) We further note that the Examiner has relied upon paragraphs 52, 55, 59, 81, 88, and 104 of the Sinisi reference which show updating the template with additionally available data records. (Final Act. 23–24, 46–47.)

Appellant further contends that the Examiner has not set forth a prima facie case of obviousness with regards to “one or more client user devices,” and Appellant further suggests that the claimed invention was technically impossible at the time of filing of Sinisi and, as such, it cannot be enabling for the above highlighted aspects of the claim, as a hand held device with such capabilities did not then exist. (Appeal Br. 29–30.) Again, Appellant’s argument is not commensurate in scope with the language of independent claim 20 because the aspects of the handheld unit are not specifically recited in the language of independent claim 20 which recites limitations regarding the “server” and not the “client device” beyond the interface application.

We note that the Specification discloses:

The implementation of FIS [Firestopping Information System] utilizing computer information system, network, and communication technologies automates the collection of information and documentation, and replaces the current, predominantly manual process that firestopping companies and facility managers now use to collect data and generate documentation. The use of FIS improves the timeliness and accuracy of a facilities reporting, preparedness, and adherence to safety and compliance codes.

(Spec. ¶ 14.)

Appellant further argues that “the technology to perform the presently claimed functionality simply did not exist at the time of the Sinisi invention”

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and provides an appendix of some Internet accessible mobile devices at the time of the Sinisi invention. (Reply Br. 5, App'x A.)

We note that the appropriate consideration of prior art is at the time of the invention rather than the time of the prior art disclosure. Consequently, Appellant's photos are not relevant to the time of the invention and are just attorney argument unsupported by the actual functionality of the proffered Internet accessible mobile devices. Attorney arguments and conclusory statements that are unsupported by factual evidence are entitled to little probative value. *Geisler*, 116 F.3d at 1470; *see also In re De Blauwe*, 736 F.2d 699, 705 (Fed. Cir. 1984); and *Ex parte Belinne*, 2009 WL 2477843, at \*3-4 (BPAI Aug. 10, 2009) (informative); *see also In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011).

As a result, Appellant's arguments do not show error in the Examiner's factual findings or the conclusion of obviousness of representative independent claim 20. Because Appellant has not set forth separate arguments for patentability of claims 1-4, 7-12, 15-18, and 20, these claims will all fall with representative independent claim 20.  
37 C.F.R. § 41.37(c)(1)(iv).

### CONCLUSION

The Examiner's rejections are affirmed.

### DECISION SUMMARY

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1-4, 7-12, 15-18, 20	101	Patent eligibility	1-4, 7-12, 15-18, 20	
1-4, 7-12, 15-18, 20	103	Sinisi and Gill	1-4, 7-12, 15-18, 20	

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<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
<b>Overall Outcome:</b>			1-4, 7-12, 15-18, 20	

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

AFFIRMED