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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte AUDREY JOSEPHINE LEICHER,
WILLIAM JOHN BITUNJAC, NATALIE VICTORIA DOYNE, and
SARAH ROXANNE PETERSON

Appeal 2018-006028
Application 13/916,116
Technology Center 3600

Before ERIC B. CHEN, HUNG H. BUI, and MICHAEL M. BARRY,
Administrative Patent Judges.

CHEN, *Administrative Patent Judge.*

DECISION ON APPEAL
STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 1, 3–7, 10–14, and 17–20. Claims 2, 8, 9, 15, and 16 have been cancelled. 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(a). Appellant identifies the real party in interest as Target Brands, Inc. (Br. 3.)

CLAIMED SUBJECT MATTER

The claims are directed to a user interface that requests offer information for an offer provided by a vendor. The offer information is received from the vendor's computing device where the offer information includes a vendor privacy setting. A request is received from a consumer's computing device for available offers. An indication that the consumer selected the offer is received and the offer and the vendor privacy setting are stored. (Abstract.)

Claim 1, reproduced below, is illustrative of the claimed subject matter, with bracketed reference numbers added and disputed limitations shown in italics:

1. A method comprising:

[i] providing a user interface to a vendor's computing device that requests offer information for an offer provided by the vendor;

[ii] receiving the offer information from the vendor's computing device, the offer information comprising a privacy setting that indicates whether the offer is private, the privacy setting being only for the received offer information;

[iii] receiving a request from a consumer's computing device for available offers;

[iv] providing to the consumer's computing device a user interface comprising the offer provided by the vendor;

[v] receiving from the consumer's computing device an indication that the consumer selected the offer provided by the vendor;

[vi] storing the offer and the privacy setting for the offer as a selected offer for the consumer;

[vii] in response to the consumer selecting the offer, a processor that defaults to posting Internet social media postings in response to consumers selecting offers, *uses the privacy*

setting as a basis for not posting an Internet social media posting regarding the consumer's selection of the offer.

REFERENCES

Name	Reference	Date
Taylor et al.	US 2012/0101881 A1	Apr. 26, 2012
Grigg et al.	US 2014/0006175 A1	Jan. 2, 2014

REJECTIONS

Claims 1, 3–7, 10–14, and 17–20 stand rejected under 35 U.S.C. § 101 as directed to patent-ineligible subject matter.

Claims 1, 3–7, 10–14, and 17–20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Taylor and Grigg.

OPINION

We are unpersuaded by Appellant's arguments (Br. 7–13) that independent claims 1, 11, and 17 are directed to patent-eligible subject matter under 35 U.S.C. § 101.

The Examiner determined that “[c]laims 1, 3–[7, 10–14], and 17–20 are 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.” (Final Act. 2.) In particular, the Examiner determined that

a human, using the mind or pen and paper, can request offer information for an offer provided by a vendor, receive the offer information including a privacy setting indicating whether the offer is private, receive a request from a consumer for offers, providing the offer provided by the vendor, receive an indication that the consumer selected the offer, storing the offer and privacy settings for the consumer, determining whether to make a social

media posting in response to the consumer selecting the offer based on the privacy setting, and posting (or not posting) the social media posting based on that determination.

(*Id.* at 3.) Moreover, the Examiner determined that “[t]he claim does not include additional elements that are sufficient to amount to significantly more than the judicial exception because the additional elements when considered both individually and as an ordered combination do not amount to significantly more than the abstract idea” because “[t]he ‘computing device(s),’ ‘user interface,’ ‘processor,’ ‘and Internet social media’ are all recited at a high level of generality and are recited as generic computers/computer components and/or are performing generic computer functions routinely used in computer applications.” (*Id.* at 4.) We agree with the Examiner’s determinations and ultimate conclusion that the claims are directed to patent-ineligible subject matter.

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: “[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 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, 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 183 n.7 (quoting *Corning v. Burden*, 56 U.S. 252, 267–68 (1853))); and manufacturing flour (*Benson*, 409 U.S. at 69 (citing *Cochrane v. Deener*, 94 U.S. 780, 785 (1876))).

In *Diehr*, the claim at issue recited a mathematical formula, but the Supreme Court held that “[a] claim drawn to subject matter otherwise statutory does not become nonstatutory simply because it uses a mathematical formula.” *Diehr*, 450 U.S. at 176; *see also id.* at 191 (“We view respondents’ claims as nothing more than a process for molding rubber products and not as an attempt to patent a mathematical formula.”). Having said that, the Supreme Court also indicated that a claim “seeking patent protection for that formula in the abstract . . . is not accorded the protection of our patent laws, . . . and this principle cannot be circumvented by attempting to limit the use of the formula to a particular technological environment.” *Id.* at 191 (citing *Benson* and *Flook*); *see also, e.g., id.* at 187 (“It is now commonplace that an *application* of a law of nature or

mathematical formula to a known structure or process may well be deserving of patent protection.”).

If the claim is “directed to” an abstract idea, we turn to the second step of the *Alice* and *Mayo* framework, where “we must examine the elements of the claim to determine whether it contains an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Alice*, 573 U.S. at 221 (citation omitted). “A claim that recites an abstract idea must include ‘additional features’ to ensure ‘that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].’” *Id.* (quoting *Mayo*, 566 U.S. at 77). “[M]erely requir[ing] generic computer implementation[] fail[s] to transform that abstract idea into a patent-eligible invention.” *Id.*

The PTO recently published revised guidance on the application of § 101. USPTO, *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019). 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* MPEP §§ 2106.05(a)–(c), (e)–(h) (9th ed. 2019)).

See 84 Fed. Reg. at 54–55. 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 are not “well-understood, routine, conventional” in the field (*see* MPEP § 2106.05(d)); or

(4) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.

See 84 Fed. Reg. at 56.

*Are the claims at issue directed
to a patent-ineligible concept?*

Step One

Claim 1 is a method claim, which falls within the “process” category of 35 U.S.C. § 101. Claim 11 is a computing device claim, and claim 17 is a storage medium claim, which fall within the “manufacture” category of 35 U.S.C. § 101. Therefore, claims 1, 11, and 17 fall within one of the four statutory categories of patentable subject matter identified by 35 U.S.C. § 101. Although claims 1, 11, and 17 fall within the statutory categories, we must still determine whether the claims are directed to a judicial exception, namely an abstract idea. *See Alice*, 573 U.S. at 216. Thus, we must determine whether the claims recite a judicial exception and whether the exception is integrated into a practical application. *See* 84 Fed. Reg. at 52–55.

Step 2A, Prong One

Independent claim 1 is a method claim, and recites the following limitations: “[i] requests offer information for an offer provided by the vendor,” “[ii] receiving the offer information . . . the offer information comprising a privacy setting that indicates whether the offer is private, the privacy setting being only for the received offer information,” and “[iii] receiving a request . . . for available offers.” Thus, the method steps of

claim 1 encompass mental processes. In particular, the foregoing method limitations of claim 1 can be performed either by human thought alone, by a human using pen and paper, or by humans without a computer. *See CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1372–73 (Fed. Cir. 2011) (“[U]npatentable mental processes” include “steps [that] can be performed in the human mind, or by a human using a pen and paper.”); *see also Mortg. Grader, Inc. v. First Choice Loan Servs. Inc.*, 811 F.3d. 1314, 1324 (Fed. Cir. 2016) (“The series of steps covered by the asserted claims . . . could all be performed by humans without a computer.”). For example, a consumer could receive a correspondence from a vendor via mail, with an option to receive private offer information. Next, the consumer could send a return correspondence to the vendor via mail, indicating interest in receiving private offers.

Independent claim 1 further recites the following limitations: “[v] receiving . . . an indication that the consumer selected the offer provided by the vendor, “[vi] storing the offer and the privacy setting for the offer as a selected offer for the consumer,” and “[vii] in response to the consumer selecting the offer, . . . postings in response to consumers selecting offers.” Likewise, the method steps of claim 1 can be performed either by human thought alone, by a human using pen and paper, or by humans without a computer. For example, the consumer can communicate acceptance of the offer to the vendor. The business records of the vendor would include the privacy setting of the consumer, and if permitted by the privacy setting, the vendor may further advertise that the consumer purchased a certain item.

Accordingly, claim 1 recites a judicial exception. Claims 11 and 17 recite limitations similar to those discussed with respect to claim 1. Thus, claims 11 and 17 also recite a judicial exception.

Step 2A, Prong Two

Because claim 1 recites a judicial exception, we next determine if the claims recite additional elements that integrate the judicial exception into a practical application.

Claim 1 recites: “[i] providing *a user interface to a vendor’s computing device* that requests offer information for an offer provided by the vendor,” “[ii] receiving the offer information *from the vendor’s computing device*,” “[iii] receiving a request *from a consumer’s computing device* for available offers,” “[iv] providing *to the consumer’s computing device a user interface* comprising the offer provided by the vendor,” “[v] receiving *from the consumer’s computing device* an indication that the consumer selected the offer provided by the vendor,” and “[vii] in response to the consumer selecting the offer, *a processor that defaults to posting Internet social media postings* in response to consumers selecting offers, uses the privacy setting as a basis for not posting an *Internet social media posting* regarding the consumer’s selection of the offer” (emphases added).

The additional elements recited in claim 1, including “user interface,” “vendor’s computing device,” “consumer’s computing device,” “processor,” and “Internet social media postings,” considered individually and in combination, are merely tools used for performing the abstract idea. *See Affinity Labs of Tex., LLC v. DirecTV, LLC*, 838 F.3d 1253, 1262 (Fed. Cir. 2016) (“[T]he claims are directed not to an improvement in cellular

telephones but simply to the use of cellular telephones as tools in the aid of a process focused on an abstract idea.”).

Accordingly, claim 1 does not recite additional elements that integrate the judicial exception into a practical application. Claims 11 and 17 recite similar limitations.

*Is there something else in the claims
that ensures that they are directed to significantly
more than a patent ineligible concept?*

Step 2B

Because claims 1, 11, and 17 are directed to a judicial exception, we next determine, according to *Alice*, whether these claims recite an element, or combination of elements, that is enough to ensure that the claim is directed to significantly more than a judicial exception.

Claim 1 is a method claim, which includes the following additional elements: “user interface,” “vendor’s computing device,” “consumer’s computing device,” “processor,” and “Internet social media postings.” Likewise, computing device claim 11 and storage medium claim 17 recite similar additional elements.

With respect to the claimed additional elements, Appellant’s Specification discloses the following:

FIG. 3 provides an example of a vendor offer set-up *user interface 300*. In accordance with some embodiments, user interface 300 is presented to vendor representative 118 after vendor representative 118 has logged into social savings server 102 such that the identity 302 of the vendor representative and the identity of the vendor is known.

(Spec. ¶ 21 (emphasis added).)

FIG. 2 provides a flow diagram for creating offers on social savings server 102. At step 200, a vendor offer set-up application 114 receives a request for an offer-creation user interface from a *vendor client device 116*. Vendor client device 116 is operated by a vendor representative 118 on behalf of a vendor.

(*Id.* ¶ 20 (emphasis added).)

In particular, social savings application 108 provides a search user interface to *client device 130* that provides a text box where a consumer 132 may enter terms and product names to be searched. When consumer 132 submits a search query, social savings application 108 searches index 122 and retrieves all offers that match the search query. Social savings application 108 then returns the matching offers to client device 130 in a search results user interface.

(*Id.* ¶ 28 (emphasis added).)

In accordance with one embodiment, *social media postings 180* take the form of templates with fields that are filled with information taken from the selected offer. In accordance with further embodiments, a separate template is provided for each social media site in social media list 111 such that different messages can be posted to different social media sites. Such posting messages can be simple messages such as “Mary has selected an offer for 15% off a brand “A”, 96 pack of diapers.”

(*Id.* ¶ 43 (emphasis added).)

An example of a computing device that can be used as a server and/or client device in the various embodiments is shown in the block diagram of FIG. 10. The computing device 10 of FIG. 10 includes a *processing unit 12*, a system memory 14 and a system bus 16 that couples the system memory 14 to the processing unit 12.

(*Id.* ¶ 56 (emphasis added).)

The generalized functional terms by which the additional elements are described reasonably indicate that Appellant’s Specification discloses: (i) conventional user interface 300; (ii) conventional vendor client device 116

(e.g., computing device 10); (iii) conventional client device 130 (e.g., computing device 10); (iv) conventional processor 12; and (v) conventional social media postings 180. Moreover, Appellant's Figure 1 illustrates that vendor client device 116, client device 130 having a user interface, and social media postings 180 function cooperatively as an ordered combination.

In view of Appellant's Specification, the claimed additional elements including "user interface," "vendor's computing device," "consumer's computing device," "processor," and "Internet social media postings" reasonably may be determined to be generic, purely conventional computer elements, as an ordered combination.

Thus, claims 1, 11, and 17 do no more than require generic additional elements to perform generic computer functions, rather than improve computer capabilities.

First, Appellant argues that

[a]ccepting . . . the Examiner's erroneous statement that the claims are directed to the idea of "determining not to post a selected offer based on privacy settings," the claims would still be directed to patentable subject matter because the idea of "determining not to post a selected offer based on privacy settings" has never been found to be abstract by the courts.

(Br. 7.) Contrary to Appellant's arguments, the Examiner has identified the appropriate judicial exception as "mental processes" and the Examiner has compared the claimed concepts of independent claim 1 to appropriate Federal Circuit decisions (i.e., *CyberSource*). Accordingly, the Examiner has met the burden of a general prima facie notice requirement. *See In re Jung*, 637 F.3d 1356, 1363 (Fed. Cir. 2011) ("[A]ll that is required of the [Patent] [O]ffice to meet its prima facie burden of production is to set forth the statutory basis of the rejection and the reference or references relied

upon in a sufficiently articulate and informative manner as to meet the notice requirement of § 132.”).

Second, Appellant argues that “[b]y not addressing this language [recited in claim 1], the Office Action comes to the erroneous conclusion that claim 1 is simply directed to not posting a selected offer based on privacy settings,” however, “claim 1 includes providing user interfaces to two different computing devices and using a processor that defaults to posting on Internet social media when a consumer selects an offer.” (Br. 9.) However, Appellant is improperly conflating part one of the *Alice* test with part two of the *Alice* test, which includes consideration of an element or combination of elements to determine if the claim recites “additional features.”

Third, Appellant argues the following:

The fact that the court in *Thales* found [the claimed invention] to be directed to patentable subject matter means that the “human mind” and “paper and pencil” tests being applied to the present claims by the Examiner are not valid tests for subject matter eligibility. As such, the reasoning provided by the Examiner for rejecting the claims is in error.

(*Id.* at 11.) However, other than a conclusory statement that “the ‘human mind’ and ‘paper and pencil’ tests . . . are not valid tests for subject matter eligibility” with a citation to *Thales Visionix Inc. v. United States*, 850 F.3d 1343 (Fed. Cir. 2017), Appellant does not adequately explain how this case pertains to the claimed invention. (*Id.*) More particularly, in *Thales* the claims were patent eligible because of non-generic technological limitations, i.e., “use [of] inertial sensors in a non-conventional manner to reduce errors in measuring the relative position and orientation of a moving object on a moving reference frame.” *Thales*, 850 F.3d at 1348–49.

Fourth, Appellant argues that “claims 1, 11 and 17 improve the process by setting rules that had not been used previously to control when information is posted to Internet social media.” (Br. 11–12.) Accordingly, Appellant argues, “[t]his makes claims 1, 11 and 17 similar to the claims in *McRO*, where the Federal Circuit found that claims directed to automating animation were directed to patentable subject matter even though animation had been done by hand in the past.” (*Id.* at 12.) However, other than a conclusory statement that the claims “improve the process by setting rules . . . when information is posted to Internet social media” with a citation to *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299 (Fed. Cir. 2016), Appellant does not adequately explain how this case pertains to the claimed invention.

Fifth, Appellant argues the following:

In claims 1, 3, 5–7 and 10, the ordered combination of elements is an inventive concept because the prior art does not provide a processor that defaults to posting Internet social media postings in response to consumers selecting offers and that uses a privacy setting provided by a vendor as a basis for not posting an Internet social media posting regarding a consumer’s selection of the offer.

(Br. 13.) However, Appellant improperly conflates the requirements for eligible subject matter with the independent requirements of novelty and non-obviousness. “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.” *Diehr*, 450 U.S. at 188–89.

Last, Appellant argues that “[s]ince this ordered combination of elements has not been used in the past, either with or without a computer,

the invention of claims 1, 3, 5–7, and 10 represents patentable subject matter under *Bascom*.” (Br. 13.) Contrary to Appellant’s arguments, in *Bascom*, the Federal Circuit did not determine that an ordered combination “not used in the past” equates to an inventive concept under *Alice*. Rather, the court articulated that “[t]he inventive concept inquiry requires more than recognizing that each claim element, by itself, was known in the art” but instead, “an inventive concept can be found in the non-conventional and non-generic arrangement of known, conventional pieces.” *Bascom Glob. Internet Servs., Inv. v. AT&T Mobility LLC*, 827 F.3d 1341, 1350 (Fed. Cir. 2016).

Thus, we agree with the Examiner that claims 1, 11, and 17 are directed towards patent-ineligible subject matter, without reciting significantly more.

Accordingly, we sustain the rejection of independent claims 1, 11, and 17 under 35 U.S.C. § 101. Claims 3–7, 10, 12–14, and 18–20 depend from independent claims 1, 11, and 17, and Appellant has not presented any additional substantive arguments with respect to these claims. We sustain the rejection of claims 3–7, 10, 12–14, and 18–20 under 35 U.S.C. § 101 for the same reasons discussed with respect to independent claims 1, 11, and 17.

§ 103 Rejection

We are unpersuaded by Appellant’s arguments (Br. 15–16) that the combination of Taylor and Grigg would not have rendered obvious independent claim 1, which includes the limitation “in response to the consumer selecting the offer, a processor that defaults to posting Internet social media postings in response to consumers selecting offers, uses the

privacy setting as a basis for not posting an Internet social media posting regarding the consumer's selection of the offer.”

The Examiner found that the L-PROMO platform of Taylor, which is linked to the user's social media account and provides notifications of promotion redemptions, corresponds to the limitation “in response to the consumer selecting the offer, a processor that defaults to posting Internet social media postings in response to consumers selecting offers.” (Final Act. 7.) The Examiner further found that the public offers of Grigg, which can be limited to a subset of individuals, corresponds to the limitation “uses the privacy setting as a basis for not posting an Internet social media posting regarding the consumer's selection of the offer.” (*Id.* at 7–8.) The Examiner concluded that “[i]t would have been obvious . . . to have included determining to post based on privacy settings because some offers may be public and some may be private, and only public ones should be publically posted.” (*Id.* at 8.) We agree with the Examiner's findings and conclusions.

Taylor relates to “a financial transaction and offer redemption” system, referred to as “L-PROMO.” (Abstract.) With respect to L-PROMO, Taylor explains that “if the consumer is eligible to apply an offer at 245, the merchant may receive a notification of promotion redemption confirmation 252” and “the social media may populate social media feeds based on the promotion redemption 260, e.g., automatically posting a Facebook status update showing the consumer ‘enjoying a 50% off mocha latte at Starbucks.’” (¶ 50.) Because Taylor explains that L-PROMO can post to a user's Facebook profile when an offer is redeemed, Taylor teaches the limitation “in response to the consumer selecting the offer, a processor that

defaults to posting Internet social media postings in response to consumers selecting offer.”

Grigg relates to “providing a social media offer system to users.” (Abstract.) Figure 1 of Grigg illustrates a flow diagram for providing a social media offer system. (¶ 12.) Referring to Figure 1, Grigg explains that “[i]n block 106, once the social media site is identified, the system provides the offer to the user through the social media site” and “the user is able to request public and/or private offers.” (¶ 27.) In particular, Grigg explains that “[a] public offer may be made public to a subset of individuals associated with the recipient of the offer, such as a group or circle of friends, acquaintances, or connections,” and that “an offer may be posted on a wall or other publicly viewable site on a social media site such that the user can control viewing of the offer by controlling privacy settings related to the publicly viewable site.” (*Id.*) Because Grigg explains that a public offer may be made to a subset of individuals, and the user can control viewing by controlling privacy settings, Grigg teaches the limitation “uses the privacy setting as a basis for not posting an Internet social media posting regarding the consumer’s selection of the offer.”

A person of ordinary skill in the art would have recognized that incorporating the privacy settings of Grigg for controlling viewing on social media with the L-PROMO system of Taylor would improve Taylor by providing the ability to control viewing of redeemed offers social media (e.g. Facebook). *See KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 417 (2007) (“[I]f a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual

application is beyond his or her skill.”). Thus, we agree with the Examiner (Final Act. 7–8) that modifying Taylor to incorporate the privacy settings of Grigg would have been obvious.

Appellant argues that “Grigg is discussing how offers are presented to a user not what is posted to social media after a user selects an offer” and “Grigg does not show or suggest using a privacy setting from a vendor to control whether a user’s selection of an offer will result in a posting to Internet social media.” (Br. 15.) However, the Examiner cited to Taylor for teaching the limitation “in response to the consumer selecting the offer, a processor that defaults to posting Internet social media postings in response to consumers selecting offers” and cited to Grigg for teaching the limitation “uses the privacy setting as a basis for not posting an Internet social media posting regarding the consumer’s selection of the offer.” (Final Act. 7.) The rejection of claim 1 is based on the combination of Taylor and Grigg, and Appellant cannot show non-obviousness by attacking references individually. *See In re Keller*, 642 F.2d 413, 426 (CCPA 1981).

Appellant further argues that “it would not be obvious to modify Grigg in order use a privacy setting from a vendor to control whether a user’s selection of an offer will result in a posting to Internet social media.” (Br. 15.) In particular, Appellant argues that “Grigg[] rewards consumers for making such postings” but “[a]dding the ability for vendors to prevent such postings through a privacy setting would greatly limit the ability of consumers to share their offers and thus would limit the main goal of Grigg.” (*Id.* at 16.) Contrary to Appellant’s argument, Grigg explains that “the user can control viewing of the offer by controlling privacy settings related to the publicly viewable site.” (¶ 27.)

Appellant also argues that “the Examiner asserted that it is common practice for people to make a determination of whether or not they should make a public post on another person’s social media based on whether the information is private or not and provided several examples of such determinations.” (Br. 16.) Accordingly, Appellant argues that “the Examiner has not cited a reference to support these assertions.” (*Id.*) However, even if Appellant is correct that the Examiner’s reliance on “common practice” is improper, the Examiner also cited to Grigg for teaching the limitation “us[es] the privacy setting as a basis for not posting an Internet social media posting regarding the consumer’s selection of the offer.” (Final Act. 7–8.)

Thus, we agree with the Examiner that the combination of Taylor and Grigg would have rendered obvious independent claim 1, which includes the limitation “in response to the consumer selecting the offer, a processor that defaults to posting Internet social media postings in response to consumers selecting offers, uses the privacy setting as a basis for not posting an Internet social media posting regarding the consumer’s selection of the offer.”

Accordingly, we sustain the rejection of independent claim 1 under 35 U.S.C. § 103. Claims 3 and 5–7 depend from claim 1, and Appellant has not presented any additional substantive arguments with respect to these claims. Therefore, we sustain the rejection of claims 3 and 5–7 under 35 U.S.C. § 103, for the same reasons discussed with respect to independent claim 1.

Independent claims 11 and 17 recite limitations similar to those discussed with respect to independent claim 1, and Appellant has not presented any additional substantive arguments with respect to these claims.

We sustain the rejection of claims 11 and 17, as well as dependent claims 12–14 and 18–20, also not separately argued, for the same reasons discussed with respect to claim 1.

Claim 4

Although Appellant nominally argues the rejection of dependent claim 4 separately (Br. 17), the arguments presented do not point out with particularity or explain why the limitations of these dependent claims are separately patentable. Instead, Appellant argues the following:

Neither paragraph [27 nor 62 of Grigg] indicates that a determination is made as to whether to enable a consumer to set a privacy setting for an offer based on a privacy setting received from a vendor's computing device. Instead, the cited paragraphs of Grigg indicate that the consumer is able to indicate whether they want to receive public or private offers. The ability to set this preference is not shown in Grigg to be based on a privacy setting received from a vendor.

(*Id.*) Instead of presenting arguments pointing out with particularity how the limitations of claim 4 are distinguishable over Grigg, Appellant merely summarizes Grigg with a conclusory statement that Grigg does not teach the features of this dependent claim. Accordingly, Appellant has not presented any substantive arguments with respect to dependent claim 4. *See In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011) (“[T]he Board reasonably interpreted Rule 41.37 to require more substantive arguments in an appeal brief than a mere recitation of the claim elements and a naked assertion that the corresponding elements were not found in the prior art.”). We are not persuaded by these arguments for the reasons discussed with respect to claim 1, from which claim 4 depends.

CONCLUSION

The Examiner's decision rejecting claims 1, 3-7, 10-14, and 17-20 under 35 U.S.C. § 101 is affirmed.

The Examiner's decision rejecting claims 1, 3-7, 10-14, and 17-20 under 35 U.S.C. § 103 is affirmed.

DECISION SUMMARY

In summary:

Claims Rejected	Basis	Affirmed	Reversed
1, 3-7, 10-14, 17-20	§ 101	1, 3-7, 10-14, 17-20	
1, 3-7, 10-14, 17-20	§ 103	1, 3-7, 10-14, 17-20	
Overall Outcome		1, 3-7, 10-14, 17-20	

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)(iv).

AFFIRMED