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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* JENNIFER DOGIN and BRIAN MAW

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Appeal 2018-006810  
Application 13/571,857  
Technology Center 3600

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Before KARA L. SZPONDOWSKI, SCOTT B. HOWARD, and  
STEVEN M. AMUNDSON, *Administrative Patent Judges*.

HOWARD, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant<sup>1</sup> appeals under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1, 2, 4, 6–10, 12, and 14–16, which constitute all of the claims pending in this application. 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. Appellant identifies the real party in interest as Mastercard International Incorporated. Appeal Br. 2.

## THE INVENTION

The disclosed and claimed invention is directed to “using controlled payment numbers with controls set by a beneficiary to provide for the secure use of benefits provided by a benefits agency for an authorized user on the beneficiary’s behalf.” Spec. ¶ 1.<sup>2</sup> Claim 1, which is illustrative of the claimed subject matter, is reproduced in the Analysis section.

## REJECTION

Claims 1, 2, 4, 6–10, 12, and 14–16 stand rejected under 35 U.S.C. § 101 as directed to patent-ineligible subject matter.

## ANALYSIS

### *Section 101 Rejection*

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,

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<sup>2</sup> We refer to the Specification filed Aug. 10, 2012 (“Spec.”); Final Office Action mailed July 14, 2017 (“Final Act.”); Appeal Brief filed Dec. 18, 2017 (“Appeal Br.”); Examiner’s Answer mailed Apr. 18, 2018 (“Ans.”); and the Reply Brief filed June 18, 2018 (“Reply Br.”).

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 v. Kappos*, 561 U.S. 593, 611 (2010)); 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. 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 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 Supreme Court also indicated that a claim “seeking patent protection for that formula in the abstract . . . is not accorded the protection of our patent laws, . . . and this principle cannot be circumvented by

attempting to limit the use of the formula to a particular technological environment.” *Id.* (citing *Benson and Flook*); *see, e.g., id.* at 187 (“It is now commonplace that an *application* of a law of nature or mathematical formula to a known structure or process may well be deserving of patent protection.”).

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

The PTO recently published revised guidance on the application of § 101. 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Memorandum”). Under that guidance, we first look to whether the claim 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) (9<sup>th</sup> ed., Rev. 08.2017, Jan. 2018)).

*See* Memorandum, 84 Fed. Reg. at 52, 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 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 id.* at 56.

Furthermore, the Memorandum “extracts and synthesizes key concepts identified by the courts as abstract ideas to explain that the abstract idea exception includes the following groupings of subject matter, when recited as such in a claim limitation(s) (that is, when recited on their own or *per se*)”:

(a) Mathematical concepts—mathematical relationships, mathematical formulas or equations, mathematical calculations;

(b) Certain methods of organizing human activity—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); and

(c) Mental processes—concepts performed in the human mind (including an observation, evaluation, judgment, opinion).

*Id.* at 52 (footnotes omitted).

USPTO Step 2A, Prong 1

The Examiner determines that the claims are “directed to . . . method steps of issuing and processing a limited use payment device by way of a controlled payment number and transaction processing (selecting payment card use conditions, receiving the issued CPN with use conditions and authorized user(s)),” and are similar to “abstract ideas similar to certain methods of organizing human activity.” Final Act. 7; *see* Ans. 3–4.

Appellant contends that the “Examiner has oversimplified Appellant’s claims” and did not address the “core features of the instant claims.” Appeal Br. 14. Specifically, Appellant contends that the

claims of the instant application require necessary, and unconventional, communication steps between the benefits agency and (i) the card issuer, (ii) the financial transaction processing system, and (iii) beneficiary, which are material to tiered identification/selection of use conditions, association and distribution of a CPN.

Appeal Br. 14; *see also* Reply Br. 2. According to Appellant, the claimed steps “have necessary temporal aspects (e.g., specific order), in which some steps are responsive to the occurrence of other steps.”

*Id.*

We are not persuaded by Appellant’s arguments that the Examiner erred.

Representative claim 1—with emphasis added—is reproduced below:

1. A computer-implemented method of *distributing a controlled payment number (CPN) by a benefits agency, which provides financial benefits to beneficiaries*, the method comprising:

*receiving*, by a receiving device of the benefits agency, a *payment card number from a card issuing bank*;

*associating, in a database device of the benefits agency, the payment card number received from the issuer, with a beneficiary;*

*receiving, by the receiving device of the benefits agency, a plurality of payment card use conditions, from a financial transaction processing system, wherein said financial transaction processing system, benefits agency, card issuing bank, and beneficiary are separate and distinct entities;*

*selecting, by a processing device of the benefits agency, a subset of payment card use conditions from the plurality of payment card use conditions received from the financial transaction processing system;*

*transmitting, by the transmitting device of the benefits agency, to the beneficiary, the subset of payment card use conditions, as selected by the benefits agency, from the plurality of payment card use conditions received from the financial transaction processing system;*

*receiving, by the receiving device of the benefits agency, a request, from the beneficiary, for a CPN, wherein the request for the CPN includes (i) a selection of at least one payment card use condition from the subset of payment card use conditions, as previously selected by the benefits agency, and (ii) identification of at least an authorized user of the CPN;*

*transmitting, by the transmitting device of the benefits agency, to the financial transaction processing system, request information for the CPN, said request information including at least (i) the payment card number associated with the beneficiary and (ii) the at least one payment card use condition, selected by the beneficiary, from the subset of payment card use conditions, and (iii) the authorized user identification information, received from the beneficiary;*

*receiving, by the receiving device of the benefits agency, the CPN issued by the financial transaction processing system, wherein said issued CPN (i) is associated with the at least one payment card use condition selected by the beneficiary from the subset of payment card use conditions selected by the benefits*

*agency and (ii) is authorized for use by the beneficiary identified authorized user;*

*associating, in the database of the benefits agency, the issued CPN, received from the financial transaction processing system, with the payment card number; and*

*distributing, by the benefits agency, to the beneficiary, the issued CPN received from the financial transaction processing system.*

The emphasized limitations are steps that are directed toward detecting or otherwise preventing financial fraud. Specifically, the emphasized limitations result in associating a beneficiary and the beneficiary's payment card with a CPN, specific payment card use conditions, and authorized users. The result is that authorized users may use the payment card to benefit the beneficiary under specific card use conditions. Consequently, the steps collectively recite a method of preventing financial fraud (i.e., using a CPN to grant access to a payment card for an authorized user limited to specific use conditions), which is one of the "certain methods of organizing human activity" (i.e., "fundamental economic principle or practice" and "commercial or legal interactions"), identified as an abstract idea in the Memorandum. *See* Memorandum, 84 Fed. Reg. at 52; *see CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1373 (Fed. Cir. 2011) (claims that "are broad and essentially purport to encompass any method or system for detecting credit card fraud which utilizes information relating credit card transactions to particular 'Internet address[es]'" are abstract ideas).

Accordingly, we conclude the claim recites a certain method of organizing human activity, which is an abstract idea identified in the Memorandum.

USPTO Step 2A, Prong 2

In determining whether claim 1 is “directed to” the identified abstract ideas, we next consider whether claim 1 recites additional elements that integrate the judicial exception into a practical application. For the reasons set forth below, we discern no additional element (or combination of elements) recited in claim 1 that integrates the judicial exception into a practical application. *See* Memorandum, 84 Fed. Reg. at 54–55.

The Examiner concludes that the claims “are not improving the functioning of the computer.” Ans. 5. Specifically, the Examiner concludes that the claimed “[s]electing specific card use conditions and authorized user conditions has been done previously by a computer,” and that it “is being performed by and routed through the . . . separate and distinct benefits agency does not provide a technological improvement but is performing tasks that were previously performed by the financial transaction processing systems or card issuer systems.” Ans. 4–5. According to the Examiner, the claimed invention “is a business improvement, not a technological solution.” Ans. 5.

Appellant contends that the “claims improve upon existing network systems as a result of the specific location of the recited benefits agency within the system and as a result of the specified communication flow between entities in that system.” App. Br. 15; *see* App. Br. 20–21. Specifically, Appellant contends the “claims operate in a **non-conventional and non-generic manner** to improve upon the way conventional technology operations to improve security measures surrounding benefits payment cards issued to beneficiaries and further shield the beneficiary from fraud.” App. Br. 15; *see also id.* at 19, 21–22; *see* Reply Br. 5. According to

Appellant, the claimed invention “is a means to ‘improve the technology of providing benefits paid to beneficiaries,’” and “clearly recite ‘a particular solution to a problem or a particular way to achieve a desired outcome,’ (i.e., a unique manner to enable hierarchical controls on use to increase security and prevent fraudulent use of a benefits card).” Reply Br. 3.<sup>3</sup>

Claim 1 does not constitute an improvement to computer technology; rather, it merely adapts the abstract idea of associating a beneficiary and the beneficiary’s payment card with a CPN, specific payment card use conditions, and authorized users, to an execution of steps practically performed by computers. *See* Spec. ¶¶ 27–28, 30, 62, 65 (the “financial transaction processing agency 106 may identify a controlled payment number that is controlled based on the selected payment card use condition(s) and transmit the identified controlled payment number,” and the “benefits agency 102 may distribute the received CPN to the beneficiary 108,” and “[e]ach of the components in the system 100 may communicate via a network” and use “various computer system configurations” and “a special purpose or a general purpose processor device”). We agree with the Examiner that any improvement is to the business process (e.g., detecting or otherwise preventing financial fraud), rather than an improvement to the technology, as the claims merely shift which entity is performing the functionality. *See* Ans. 4–5.

Moreover, relying on a computer to perform routine data processing tasks more quickly or more accurately is insufficient to render a claim patent

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<sup>3</sup> Appellant has not argued the claim is directed to a particular machine or results in a transformation or reduction of a particular article to a different state or thing. *See* MPEP § 2016.05(b), (c); Memorandum, 84 Fed. Reg. at 54.

eligible. *See Alice*, 573 U.S. at 224 (“use of a computer to create electronic records, track multiple transactions, and issue simultaneous instructions” is not an inventive concept); *Bancorp Servs., L.L.C. v. Sun Life Assur. Co. of Can. (U.S.)*, 687 F.3d 1266, 1278 (Fed. Cir. 2012) (a computer “employed only for its most basic function . . . does not impose meaningful limits on the scope of those claims”); MPEP § 2106.05(f)(2) (“Use of a computer or other machinery in its ordinary capacity for economic or other tasks (*e.g.*, to receive, store, or transmit data) or simply adding a general purpose computer or computer components after the fact to an abstract idea (*e.g.*, a fundamental economic practice or mathematical equation) does not provide significantly more.”).

Appellant further analogizes the claims here to the claims in *BASCOM*. Appeal Br. 15, 16–17, 18–20 (citing *BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1351 (Fed. Cir. 2016)). Specifically, Appellant argues “**the inventive concept of the instant claims, like *Bascom*, is the specific location of the benefits agency**, which provides advantages over existing systems . . . for example, [it] enables hierarchical regulations on card use controls for the provision of a CPN to better shield the beneficiary against fraud.” *Id.* at 19; *see also* Reply Br. 4.

Appellant misplaces its reliance on *BASCOM*. There, the claims recited a “specific method of filtering Internet content” requiring “the installation of a filtering tool at a specific location, remote from the end-users, with customizable filtering features specific to each end user.” *BASCOM*, 827 F.3d at 1345–46, 1350. The Federal Circuit reasoned that the claims covered “a technology-based solution . . . to filter content on the Internet that overcomes existing problems with other Internet filtering

systems” and “improve[s] an existing technological process.” *Id.* at 1351 (citing *Alice*, 573 U.S. at 223); *see Alice*, 573 U.S. at 223 (explaining that “the claims in *Diehr* were patent eligible because they improved an existing technological process”).

In contrast to the claims in *BASCOM*, the claims here, including the claimed location of the benefits agency, do not cover a technology-based solution that improves an existing technological process. *See* Final Act. 8–9; Ans. 4–8. As the Examiner correctly determines, the claimed “specific location” of the benefits agency does not provide “any additional benefits to the system” in the same way “as the specific location of the filtering in *BASCOM* provided additional improvements to the system.” Ans. 6. Specifically, the Examiner determines that the “payment card contains use conditions and limits by authorized user regardless of the location of the benefits agency and . . . that the use conditions, not the location of the benefits agency, are protecting the card holder from fraud.” *Id.*

Furthermore, in *BASCOM*, the Specification described the inventive concept as “the installation of a filtering tool at a specific location” that “rests on taking advantage of the ability of at least some ISPs to identify individual accounts that communicate with the ISP server, and to associate a request for Internet content with a specific individual account.” *BASCOM*, 827 F.3d at 1350. In contrast, here, Appellant does not direct our attention to anything in the Specification that identifies advantages or improvements to the technological process due to the location of the benefits agency. Rather, Appellant indicates the advantage of the specific location of the benefits agency allows the arrangement “to better shield the beneficiary

against fraud.” Appeal Br. 19; *see also* Appeal Br. 22. Hence, the claims here do not resemble the claims in *BASCOM*.

Appellant further argues that “preemption is not apparent,” and the claims do “‘not preempt all uses’ of the alleged abstract idea of ‘issuing and processing a limited use payment device by way of a controlled payment number and transaction processing.’” Appeal Br. 16–17. Although the extent of preemption is a consideration, the absence of complete preemption is not dispositive. *See, e.g., Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (“While preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.”). Therefore, even if the claims do not preempt the abstract idea, that alone is not enough to render the claims patent eligible.

Accordingly, we are not persuaded of error in the Examiner’s determination that claim 1 is directed to an abstract idea, and we find the claimed additional elements do not integrate the abstract idea into a practical application.

USPTO Step 2B

Turning to step 2B of the USPTO Guidance, we look to whether claim 1 (a) adds a specific limitation or combination of limitations that are not well-understood, routine, conventional activity in the field, or (b) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception. Memorandum, 84 Fed. Reg. at 56.

The Examiner determines that the claimed additional elements such as the receiving device, transmitting device, and database require functionality no more than that of a generic computer and

generic components . . . to perform the generic computer functions of receiving a payment card number, associating the payment card number to a beneficiary, receiving [possible selectable data ie use conditions], transmitting [selected data], associating the issued CPN to the payment card number, distributing the issued CPN, and processing [the authorization request], which are similar to the generic computer functions identified by the court.

Final Act. 8–9 (citing Spec. ¶¶ 62, 65); *see* Ans. 6.

Appellant argues that the “claims operate in a **non-conventional and non-generic manner** to improve upon the way conventional technology operations to improve security measures surrounding benefits payment cards issued to beneficiaries and further shield the beneficiary from fraud.”

Appeal Br. 15; *see also id.* at 19, 21–22; Reply Br. 5.

We are not persuaded by Appellant’s argument that the Examiner erred. As discussed above, claim 1 is directed to associating a beneficiary and the beneficiary’s payment card with a CPN, specific payment card use conditions, and authorized users, which is an abstract idea, by executing steps practically performed by computers. Similarly, the additional elements in the claim amount to no more than mere instructions to apply the abstract idea using generic computer components (e.g., receiving device, database device, financial transaction processing system, processing device, transmitting device), which is insufficient to provide an inventive concept. *See, e.g.*, Spec. ¶¶ 61–69. Specifically, the Specification generically describes the claimed computer components, including “various computer system configurations” and “at least one processor device and a memory.” Spec. ¶ 62. The Specification further describes that the “processor device . . . may be a single processor, a plurality of processors, or combinations thereof.” Spec. ¶ 63. As an example, the “[p]rocessor device 704 may be a

special purpose or a general purpose processor device” and “may be connected to a communication infrastructure.” Spec. ¶ 65. Accordingly, we agree with the Examiner that the additional claim limitations besides the abstract idea are well-understood, routine, and conventional elements.

Appellant does not direct our attention to anything in the Specification that indicates the claimed computer components (e.g., receiving device, database device, financial transaction processing system, processing device, transmitting device) perform anything other than well-understood, routine, and conventional functions, such as receiving and transmitting information (i.e., receiving payment card numbers, receiving payment card use conditions, transmitting selected payment card use conditions, receiving requests including selected payment card use conditions and authorized user identification, transmitting request for the CPN, receiving the CPN, distributing the CPN), and analyzing and storing the information to associate a beneficiary and the beneficiary’s payment card with a CPN, specific payment card use conditions, and authorized users (i.e., associate the payment card number with a beneficiary, associate the issued CPN with the payment card number). *See buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014) (“That a computer receives and sends the information over a network—with no further specification—is not even arguably inventive”); *In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d 607, 614 (Fed. Cir. 2016) (server that receives data, extracts classification information from the received data, and stores the digital images insufficient to add an inventive concept); *Alice*, 573 U.S. at 225–26 (receiving, storing, sending information over networks insufficient to add an inventive concept); *CyberSource*, 654 F.3d at 1370 (use of Internet to verify credit-card

transaction does not add enough to abstract idea of verifying the transaction); *see also* MPEP § 2106.05(d) (“Courts have held computer-implemented processes not to be significantly more than an abstract idea (and thus ineligible) where the claim as a whole amounts to nothing more than generic computer functions merely used to implement an abstract idea, such as an idea that could be done by a human analog (i.e., by hand or by merely thinking.”).

*Conclusion on Section 101 Rejection*

Accordingly, we sustain the Examiner’s rejection of claim 1 as being directed to patent-ineligible subject matter, as well as independent claims 6, 9, and 14 with commensurate limitations, and dependent claims 2, 4, 7, 8, 10, 12, and 15, and 16, not separately argued.<sup>4</sup>

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<sup>4</sup> Although Appellant states that the Examiner’s determination that “[d]ependent claims 2, 4, 7–8, 10, 12, and 15–16 do not remedy the deficiencies of the independent claims and are rejected accordingly . . . all claims have been reviewed and are found to be substantially similar and linked to the same abstract idea” is not sufficient, Appellant does not specifically identify how the Examiner erred. *See* Appeal Br. 22 (quoting Final Act. 9). However, this amounts to little more than general denial that fails to address the Examiner’s findings and conclusions and is, therefore, insufficient to be considered an argument for separate patentability. *See* 37 C.F.R. § 41.37(c)(1)(iv) (setting forth the requirements for an “argument for separate patentability of the claim”); *In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011) (“[W]e hold that the Board reasonably interpreted Rule 41.37 to require more substantive arguments in an appeal brief than . . . a naked assertion that” the Examiner erred.).

CONCLUSION

In summary:

<b>Claims Rejected</b>	<b>Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1, 2, 4, 6–10, 12, and 14–16	§ 101	1, 2, 4, 6–10, 12, and 14–16	

DECISION

We affirm the Examiner’s § 101 rejection of claims 1, 2, 4, 6–10, 12, and 14–16.

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). *See* 37 C.F.R. § 41.50(f).

AFFIRMED