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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CHEN-SHAN CHIN, PATRICK MARKS,
DAVID ALEXANDER, AARON KLAMMER,
and STEPHEN W. TURNER

Appeal 2018-006838
Application 13/941,442
Technology Center 1600

Before DONALD E. ADAMS, FRANCISCO C. PRATS, and
JOHN E. SCHNEIDER, *Administrative Patent Judges*.

SCHNEIDER, *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, 5–8, and 14–27. 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 Pacific Biosciences of California, Inc. Appeal Br. 3.

CLAIMED SUBJECT MATTER

The claims are directed to a hierarchical genome assembly method using a single long insert library (*see* Spec. 1, Title). Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method of identifying a sequence of a nucleic acid by at least one software component executing on a processor, the method comprising:
 - receiving, by the processor, a set of reads for the nucleic acid sequence wherein the reads have an average length (L) of at least 0.5 kb;
 - selecting, by the processor, a plurality of seed reads from the set of reads by applying a predetermined length cutoff l_{cutoff} to the set of reads, wherein the l_{cutoff} is at least 1 kb;
 - aligning, by the processor, each read in the set of reads to one or more seed reads in the plurality of seed reads, thereby producing a mini-assembly for each seed read that comprises a subset of the set of reads, and thereby forming a plurality of mini-assemblies;
 - creating, by the processor, a respective pre-assembled read for each respective mini-assembly in the plurality of mini-assemblies by discarding those portions of the respective mini-assembly that do not exhibit a minimum coverage with respect to the nucleic acid and by removing one or more insertion errors in the subset of reads of the mini-assembly thereby generating a set of pre-assembled reads;
 - using, by the processor, a sequence assembler to assemble the set of preassembled reads into one or more contigs for the nucleic acid; and
 - determining, by the processor, a consensus sequence of the nucleic acid using the one or more contigs.

The Examiner has rejected all of the pending claims under 35 U.S.C. § 101 as directed to patent ineligible subject matter.

DISCUSSION

Issue

The Examiner finds that the rejected claims are directed to a judicial exception without significantly more. Final Act. 2. Applying the three part test set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 US 66 (2012) the Examiner finds that while the claims recite a method, a system, and non-transitory computer-readable medium, the claims are directed to an abstract idea, specifically mathematical/algorithmic data manipulations. Final Act. 3. The Examiner finds that the claims recite the steps of

“selecting, by the processor, a plurality of seed reads from the set of reads by applying a predetermined length cutoff l_{cutoff} to the set of reads. . .”;

“aligning, by the processor, each read in the set of reads to one or more seed reads in the plurality of seed reads. . .”;

“creating, by the processor, a respective pre-assembled read for each respective minassembly in the plurality of min-assemblies by discarding those portions of the respective miniassembly that do not exhibit a minimum coverage. . .”;

“using, by the processor, a sequence assembler to assemble the set of pre-assembled reads into one or more contigs”; and

“determining, by the processor, a consensus sequence of the nucleic acid using the one or more contigs,”

which are the type of data manipulations that the courts have found to be ineligible subject matter. *Id.* at 4. The Examiner finds that the rejected claims are akin to the types of claims found ineligible in the following cases:

Digitech Image Tech., LLC v. Electronics for Imaging, Inc., 758 F.3d 1344 (Fed Cir 2014)- “process of organizing information through mathematical correlations not tied to a specific structure or machine”;

Electric Power Group (Fed. Cir. 2016)- “the collection, analysis, and display of available information in a particular field”; [and]

Fair Warning IP LLC (Fed Cir 2016)- “the broad concept of monitoring audit log data”;

Final Act. 5. Specifically the Examiner finds that the recited steps do not go beyond data gathering and data manipulation. *Id* at 5–7.

The Examiner also finds that the claims are distinct from the claims in *Enfish LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016), where the court found the claims to be patent eligible. *Id.* at 5–7. The Examiner finds that, unlike the claims in *Enfish*, the present claims involve an abstract idea implemented by a computer rather than a specific improvement to the way a computer operates. *Id.*

With respect to the presence of additional elements, the Examiner finds that the claims only recited a set of steps to be performed on a generic computer and that no additional steps or elements are recited. *Id.* at 7–8.

The Examiner concludes that “the claims are nonstatutory.” *Id.* at 8.

Appellant contends that the present claims are patent eligible under the streamlined analysis set forth in the *Interim Guidance on Patent Subject Matter Eligibility*, 79 Fed. Reg. 74618 (December 16, 2014). Appeal Br. 15. Appellant contends that the claims are patent eligible in that they do not seek to tie up a judicial exception. *Id.* at 15–16.

Appellant also contends that the claims, when properly construed are not directed to an abstract idea but are drawn to a complex method for identifying the sequence of a nucleic acid. *Id.* at 17. Appellant contends that the claims embrace a specific method for “exploiting a unique property

of some forms of sequencing that produce a set of sequence reads in which some of the sequencing reads are longer than others.” *Id.* at 18.

Appellant argues that the rejected claims focus on a “specific solution to a problem in the sequencing art – *e.g.*, improving the accuracy by exploiting the properties of some forms of sequencing in which the resultant sequencing set contains reads that are longer than other reads.” *Id.* at 20.

Appellant contends that this renders the claims similar to those found patent eligible in *McRO, Inc. v. Bandai Namco Games America*, 837 F.3d 1299 (Fed. Cir. 2016) and *Diamond v. Diehr*, 450 U.S. 175 (1981). Appeal Br. 21–25.

Appellant argues that the rejected claims include significantly more than the judicial exception. *Id.* at 26–30. Appellant contends that that claims feature a specific set of rules which create an improved method for sequencing nucleic acids. *Id.* at 28.

Appellant also contends that the Examiner has not shown that the present method is the same as any method previously used. *Id.* at 29.

Appellant argues that “[b]ecause Appellant’s claimed method is novel and non-obvious, as recognized in the Office Action, it necessarily follows that the claimed method was not a well-understood, routine, and conventional activity, previously engaged in by scientists in the field.” *Id.* at 30.

Appellant argues that the present claims “do[] not preempt any judicially-created exception to Section 101.” *Id.* at 31.

Appellant contends

[the] claimed method includes significantly more because it includes an inventive concept that provides an improvement to existing nucleic acid sequencing techniques. Thus, claim 1 is patent-eligible because it includes significantly more than

elements that were well-understood, routine, or conventional activities previously engaged in by scientists in nucleic acid sequencing.

Id. at 31.

We address independent claim 1 as Appellant has not argued the remaining claims separately.

Principles of Law

An invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. However, the U.S. Supreme Court has long interpreted 35 U.S.C. § 101 to include implicit exceptions: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *E.g.*, *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014).

In determining whether a claim falls within an excluded category, we are guided by the Court’s two-part 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 waterproof cloth, vulcanizing India rubber, smelting ores” (*id.* at 182 n.7 (quoting *Corning v. Burden*, 56 U.S. 252, 267–68 (1853))); and manufacturing flour (*Benson*, 409 U.S. at 69 (citing *Cochrane v. Deener*, 94 U.S. 780, 785 (1876))).

In *Diehr*, the claim at issue recited a mathematical formula, but the Court held that “a claim drawn to subject matter otherwise statutory does not become nonstatutory simply because it uses a mathematical formula.” *Diehr*, 450 U.S. at 187; *see also id.* at 191 (“We view respondents’ claims as nothing more than a process for molding rubber products and not as an attempt to patent a mathematical formula.”). Having said that, the Court also indicated that a claim “seeking patent protection for that formula in the abstract . . . is not accorded the protection of our patent laws, and this principle cannot be circumvented by attempting to limit the use of the formula to a particular technological environment.” *Id.* (citation omitted) (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 part 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 (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.* (alterations in original) (quoting *Mayo*, 566 U.S. at 77). “[M]erely requir[ing] generic computer implementation[] fail[s] to transform that abstract idea into a patent-eligible invention.” *Id.*

B. USPTO Section 101 Guidance

In January 2019, the U.S. Patent and Trademark Office (USPTO) published revised guidance on the application of § 101. 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) (“2019 Revised Guidance”).² “All USPTO personnel are, as a matter of internal agency management, expected to follow the guidance.” *Id.* at 51; *see also* October 2019 Update at 1.

Under the 2019 Revised Guidance and the October 2019 Update, 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) (“Step 2A, Prong One”); and

² In response to received public comments, the Office issued further guidance on October 17, 2019, clarifying the 2019 Revised Guidance. USPTO, *October 2019 Update: Subject Matter Eligibility* (the “October 2019 Update”) (available at https://www.uspto.gov/sites/default/files/documents/peg_oct_2019_update.pdf).

(2) additional elements that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h) (9th ed. Rev. 08.2017, Jan. 2018)) (“Step 2A, Prong Two”).³

2019 Revised Guidance, 84 Fed. Reg. at 52–55.

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, do we then look, under Step 2B, to whether the claim:

(3) adds a specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field (*see* MPEP § 2106.05(d)); or

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

2019 Revised Guidance, 84 Fed. Reg. at 52–56.

Analysis

Applying the Guidance, we agree with the Examiner’s conclusion that the rejected claims are directed to patent-ineligible subject matter and do not include additional features sufficient to transform the abstract idea into a patent-eligible application of the abstract idea.

³ This evaluation is performed by (a) identifying whether there are any additional elements recited in the claim beyond the judicial exception, and (b) evaluating those additional elements individually and in combination to determine whether the claim as a whole integrates the exception into a practical application. *See* 2019 Revised Guidance - Section III(A)(2), 84 Fed. Reg. 54–55.

Step 2A, Prong One

In Step 2A, Prong One of the Guidance, we evaluate whether the claims recited a judicial exception, such as “mental processes – concepts performed in the human mind (including an observation, evaluation, judgment, opinion).” Guidance, 84 Fed. Reg. at 52. In its Appeal Brief, Appellant argues:

Appellant’s claim 1 is patent eligible because, when considered in light of the specification, is not directed to excluded subject matter. Specifically, claim 1 is directed to a complex method for identifying a sequence of a nucleic acid. Claim 1 allows for the novel realization of a physical property of a molecule: the sequence of a nucleic acid using set of reads from sequencing of the nucleic acid. Claim 1 does this in an improved matter relative to conventional nucleic acid sequencing.

Appeal Br. 17.

We agree with the Examiner’s evaluation that there are several mental steps recited in claim 1, and thus the claim recited judicial exceptions. The claimed method begins with the steps of receiving a set of reads for a nucleic acid sequence and the selection of a plurality of seed reads from the set of reads based on the length of the reads. Appeal Br. 35 (Claims App’x). Both of these steps are mental steps under the guidance. The gathering of data, observation and selection of a sequence read that is at least 500 base pairs long and application of a predetermined cutoff length to further select sequences are operations that can be done by a human.

The next step in the method calls for aligning each read in the data set to one or more seed reads to produce a mini-assembly. *Id.* Here again,

while the step calls for the use of a computer, the alignments can be effected by a human comparing the individual reads to the different seed reads.

The fourth step of the method in claim 1 calls for creating a pre-assembled read for the mini-assemblies by discarding the portions of the mini-assemblies that do not exhibit a minimum coverage and by removing insertion errors. *Id.* Here again, while the claim recites the use of a processor, the determination of whether a mini-assembly meets a certain coverage criteria and the elimination of insertion error can be done in the human mind.

The remaining steps call for assembly of the preassembled reads into one or more contigs and then developing a consensus sequence of the nucleic acid using one or more of the contigs. *Id.* These steps involve data manipulation which has been held to fall within the mental process category of abstract ideas.

We address the issue of practical application under Step 2A, Prong Two of the Guidance, below. Guidance, 84 Fed. Reg. at 54–55.

Step 2A, Prong Two

In the Prong Two analysis, we examine whether there are additional elements *beyond* the judicial exception that integrate it into a practical application. *Id.* (integration into a practical application is evaluated by: “(a) Identifying whether there are any additional elements recited in the claim beyond the judicial exception(s); and (b) evaluating those additional elements individually and in combination to determine whether they integrate the exception into a practical application, using one or more of the considerations laid out by the Supreme Court and the Federal Circuit.”). That is we look to the claim to see if it “appl[ies], rel[ies] on, or use[s] the

judicial exception in a manner that imposes a meaningful limit on the judicial exception.” *Id.* at 53.

Appellant contends that claim 1 includes more than a judicial exception in that it is directed to “an improved method of nucleic acid sequencing that aligns non-seed reads in a set of reads to one or more seed reads in a plurality of seed reads, thereby producing a mini-assembly for each seed read, under certain conditions and assumptions.” Appeal Br. 28. However, Appellant does not identify the steps or elements of the claim that are additional to the abstract ideas in explaining the alleged technical solution. Rather, Appellant indicates that the combination of the mental steps discussed above is what achieves the improvement in nucleic acid sequencing. *Id.* We do not find Appellant’s argument persuasive. “An inventive concept that transforms the abstract idea into a patent-eligible invention must be significantly more than the abstract idea itself.” *BASCOM Global Internet Services, Inc. v. AT&T Mobility*, 827 F.3d 1341, 1349 (Fed. Cir. 2016).

Claim 1 calls for the use of a processor to perform various steps. The processor is recited generically as simply a “processor” and the activity performed by that generic processor is normal computer functionality, i.e., receive information, storing that information, and comparing information. The requirement of using a computer processor is not sufficient to establish integration of the abstract idea into a practical application. One of the “examples in which a judicial exception has not been integrated into a practical application” is when “[a]n additional element ... merely includes instructions to implement an abstract idea on a computer, or merely uses a computer as a tool to perform an abstract idea.” Guidance 84 Fed. Reg. at

55 (emphasis added); *FairWarningIP, LLC v. Latric Sys., Inc.*, 839 F.3d 1089, 1096 (Fed. Cir. 2016 (“[T]he use of generic computer elements like a microprocessor or user interface do not alone transform an otherwise abstract idea into patent-eligible subject matter.”) (Citation omitted.). That the claimed system may result in faster and more accurate identifications in large data sets does not take the claim out of the realm of the abstract. “[R]elying on a computer to perform routine tasks more quickly or more accurately is insufficient to render a claim patent eligible.” *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015); *see also Intellectual Ventures I LLC v. Erie Indemnity Co.*, 711 F. App’x 1012, 1017 (Fed. Cir. 2017) (unpublished) (“Though the claims purport to accelerate the process of finding errant files and to reduce error, we have held that speed and accuracy increases stemming from the ordinary capabilities of a general-purpose computer ‘do[] not materially alter the patent eligibility of the claimed subject matter.’”); *see also Bancorp Servs., L.L.C. v. Sun Life Assurance Co. of Can. (U.S.)*, 687 F.3d 1266, 1278 (Fed. Cir. 2012) (“[T]he fact that the required calculations could be performed more efficiently via a computer does not materially alter the patent eligibility of the claimed subject matter.”).

Appellant contends that the method in claim 1 is similar to the method for patent eligible in *McRO*. Appeal Br. 23. Appellant argues that the court in *McRO* found the claims to be directed to a tangible result, namely automated three-dimensional computer animation, which is a specific technological process. *Id.* Appellant contends that method recited in claim 1 is like the method in *McRO* in that it is a specific method for exploiting a unique property of some forms of sequencing that produce a set of sequence

reads in which some reads are longer than others. *Id.* Appellant contends that the claimed method improves the accuracy for the sequence reads. *Id.* We do not find this argument persuasive.

In *McRO*, it was not the mere presence of unconventional rules that led to patent eligibility. In *McRO*, “[t]he claimed improvement was to how the physical display operated (to produce better quality images).” *SAP Am. v. InvestPic, LLC*, 898 F.3d 1161, 1167 (Fed. Cir. 2018). The claims in *McRO* recited a step of applying the data sets generated using the specific claimed rules to a sequence of animated characters to produce lip synchronization and facial expression control of those animated characters. *McRO*, 837 F.3d at 1308. Thus, the claims were directed to an improvement in computer animation and used rules to automate a subjective task of humans to create a sequence of synchronized, animated characters. *Id.* at 1314–15. In the claims at issue here, there is no such application of specifically claimed rules to produce an improved technological result. The method for identifying a nucleic acid sequence is not a technological process, it is information gathering.

Appellant’s reliance on *Enfish* is similarly unpersuasive. *See* Appeal Br. 29.

The disputed claims in *Enfish* were patent-eligible because they were “directed to a specific improvement to the way computers operate, embodied in [a] self-referential table.” *Enfish*, 822 F.3d at 1336. The court found that the “plain focus of the claims” there was on an improvement to computer functionality itself—a self-referential table for a computer database, designed to improve the way a computer carries out its basic functions of storing and retrieving data— not on a task for which a computer is used in its ordinary

capacity. *Id.* at 1335-36. For example, a representative claim recited a data storage and retrieval system for a computer memory having a means for configuring a memory according to a logical table that included rows, columns, and a means for indexing data. *Id.* at 1336. The means for configuring required a four-step algorithm, and the third step of that algorithm (i.e., “[f]or each column, store information about the column in one or more rows”), rendered the table self-referential. *Id.* The court noted that the specification identified additional benefits conferred by the self-referential table (e.g., increased flexibility, faster search times, and smaller memory requirements), which further supported the court's conclusion that the claims were directed to an improvement of an existing technology. *Id.* at 1337 (citation omitted).

Here, in contrast, Appellant does not purport to have invented a data structure analogous to *Enfish*'s self-referential table. And Appellant fails to explain sufficiently and persuasively how claim 78 is directed to an improvement in the way computers operate analogous to the case in *Enfish*. We find instead that Appellant's claim merely uses generic computer components (e.g., a processor and memory) that operate in their normal, expected manner.

We are similarly unpersuaded by Appellant's reliance on *DDR Holdings, LLC. v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014).

In *DDH Holdings*, the court found that the claims were patent eligible as they included additional elements “rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks.” *Id.* at 1256. As with Appellant's reliance on *Enfish*, again,

Appellant has not pointed to any evidence in the record that the claimed method improves the operation of a computer or computer network.

While the “rules” recited in claim 1 may improve the art of nucleic acid sequencing, those rules are the abstract idea and they do not improve computer technology *per se* or provide an improved technological result. The claim instead invokes computers in the collection of data and analysis of data. Claims that recite performing information analysis (e.g., statistical analyses and correlating ontological information), as well as the collection and manipulation of information related to such analysis, have been determined by our reviewing court typically to be an ineligible concept. *See SAP*, 898 F.3d, 1165, 1167, 1168 (Claims reciting “[a] method for providing statistical analysis” (*id.* at 1165) were determined to be “directed to an abstract idea” (*id.* at 1168)); *see also Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat’l Ass’n*, 776 F.3d 1343, 1345, 1347 (Fed. Cir. 2014) (finding the “claims generally recite ... extracting data ... [and] recognizing specific information from the extracted data” and that the “claims are drawn to the basic concept of data recognition”). “As many cases make clear, even if a process of collecting and analyzing information is limited to particular content or a particular source, that limitation does not make the collection and analysis other than abstract.” *SAP*, 898 F.3d at 1168 (internal quotation marks omitted)).

Step 2B

Having concluded that Appellant’s claim 78 is directed to an abstract idea under Step 2A of the Guidance, we turn to Step 2B of the Guidance. Contrary to Appellant’s contention (Reply Br. 11), Step 2B requires that we look to whether the claim “adds a specific limitation *beyond the judicial*

exception that [is] not ‘well-understood, routine, conventional’ in the field.” Guidance 84 Fed. Reg. at 56 (emphasis added); MPEP § 2106.05(d); *see BSG TechLLCv. BuySeasons, Inc.*, 899 F.3d 1281, 1290 (Fed. Cir. 2018) (explaining that the Supreme Court in *Alice* “only assessed whether the claim limitations other than the invention’s use of the ineligible concept to which it was directed were well-understood, routine and conventional”). “Even assuming [the claimed invention is novel], it does not avoid the problem of abstractness.” *Affinity Labs of Tex., LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1263 (Fed. Cir. 2016). That is because the inventive concept must be significantly more than the abstract idea itself. *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (Fed. Cir. 2016) (“[A] claim for a new abstract idea is still an abstract idea.”)

As discussed above, the only limitations in the claims that are not directed to mental steps are those calling for the use of a processor or computer. Appellant’s Specification supports the conclusion that the computer or processor used is one that is well-understood, routine and conventional. In particular, the Specification teaches that the device used “is not limited to a personal computer, but can be any apparatus for interacting with a remote data application, and could include such devices as a digitally enabled television, cell phone, personal digital assistant, etc.” Spec. ¶ 80.

The recited computer does not provide “significantly more” than the abstract idea, because “the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention.” *Alice*, 573 U.S. at 223.

In light of the foregoing, we conclude that claim 1 is directed to no more than judicial exceptions to Section 101 and does not recite the

“significantly more” requisite to transform the nature of the claim into a patent-eligible application. We consequently affirm the Examiner's rejection upon this ground.

Claims 2, 3, 5–8, and 14–27 have not been argued separately and therefore fall with claim 1. 37 C.F.R. § 41.37(c)(1)(iv).

CONCLUSION

The Examiner’s rejection under 35 U.S.C. § 101 is affirmed

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–3, 5–8, 14–27	101	Eligibility	1–3, 5–8, 14–27	

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). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED