



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/285,285	05/22/2014	Timothy H. Heaton	01-1059-C1	8003
63710	7590	06/06/2019	EXAMINER	
INNOVATION DIVISION CANTOR FITZGERALD, L.P. 110 EAST 59TH STREET (6TH FLOOR) NEW YORK, NY 10022			HSU, RYAN	
			ART UNIT	PAPER NUMBER
			3715	
			NOTIFICATION DATE	DELIVERY MODE
			06/06/2019	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocketing@cantor.com
lkorovich@cantor.com
phowe@cantor.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte TIMOTHY H. HEATON and HOWARD W. LUTNICK

Appeal 2018-007174
Application 14/285,285
Technology Center 3700

Before EDWARD A. BROWN, MICHAEL J. FITZPATRICK, and
MICHELLE R. OSINSKI, *Administrative Patent Judges*.

BROWN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

(“Appellant”)¹ seeks review under 35 U.S.C. § 134(a) of the Examiner’s decision rejecting claims 42–60 and 62.² We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ BGC Partners, Inc. (“Appellant”) is also identified as the real party in interest. 37 C.F.R. § 1.46; Appeal Br. 2.

² Claims 1–41 and 61 have been cancelled. Appeal Br. 2.

CLAIMED SUBJECT MATTER

Claims 42, 56, and 62 are independent claims. Claim 42, reproduced below, illustrates the claimed subject matter:

42. A method comprising:
- causing to be displayed, at an electronic display screen of at least one computer comprising at least one gaming device, a list comprising a plurality of games, each of the games selectable for initiating game play on the at least one gaming device comprising a mobile gaming device in electronic communication with at least one computer via an electronic communications network;
 - receiving by the at least one gaming device a selection from a user of at least one game of the plurality of games;
 - receiving, by the at least one computer, from a user at least one game play command and a plurality of wagers during multiple game plays of the at least one game played via the at least one gaming device;
 - causing an indicia representing a value of wins or losses associated with the user to be displayed at the electronic display screen;
 - after causing the indicia to be displayed, receiving information about a win or loss associated with the user;
 - responsive to receiving information about a win or loss, automatically updating the indicia displayed at the electronic display screen to reflect an updated value of wins or losses;
 - automatically determining, by the at least one computer, at least one complimentary good or service earned by a user based at least on information relating to the user playing the at least one game; and
 - automatically causing to be simultaneously output to the user via the electronic display screen, by the at least one computer, the at least one complimentary good or service earned by the user and a monetary value of the at least one complimentary good or service earned by the user.

Appeal Br. 20 (Claims App.).

REJECTIONS

Claims 42–60 and 62 stand rejected under 35 U.S.C. § 101 as directed to patent-ineligible subject matter.

Claims 42–48 and 52–62 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Rowe (US 2002/0187834 A1, published Dec. 12, 2002) (hereinafter, “Rowe ’834”), Rowe (US 7,008,320 B2, issued Mar. 7, 2006) (hereinafter, “Rowe ’320”), and Mages (US 2003/0006931, published Jan. 9, 2003).

Claim 49 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Rowe ’834, Rowe ’320, Mages, and Walker (US 2003/0013516 A1, published Jan. 16, 2003).

Claim 50 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Rowe ’834, Rowe ’320, Mages, and Okada (US 5,127,651, issued July 7, 1992).

Claims 42–60 and 62 stand rejected on the ground of non-statutory, obviousness-type double patenting as unpatentable over claims 1–25 of Heaton (US 8,734,226 B2, issued May 27, 2014).

ANALYSIS

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.

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*, 130 S. Ct. 3218 (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)).

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 (quotation marks omitted). “A claim that recites an abstract idea must include ‘additional features’ to ensure ‘that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].’” *Id.* (quoting *Mayo*, 566 U.S. at 77). “[M]erely requir[ing] generic computer implementation[] fail[s] to transform that abstract idea into a patent-eligible invention.” *Id.*

On January 7, 2019, the PTO issued revised guidance on the application of § 101. *See 2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (hereinafter “2019 Guidance”). The 2019 Guidance includes steps 2A and 2B. Under Step 2A, Prong One, of that

guidance, we first look to whether the claim recites any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human activities such as a fundamental economic practice, or mental processes).

If a claim recites a judicial exception, we proceed to Step 2A, Prong Two, and determine whether the claim recites additional elements that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h)).

Only if a claim both recites a judicial exception and does not integrate that exception into a practical application, do we proceed to Step 2B of the guidance. At this step, we determine whether the claim adds a specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field (*see* MPEP § 2106.05(d)); or simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception. *See* 2019 Guidance.

Claim Grouping

Appellant argues claims 42–60 and 62 together and presents argument only for claim 42 in contesting the rejection under § 101. *See* Appeal Br. 4–14; *see also id.* at 18 (“The Final Office Action rejects claims 56 and 62 with substantially the same reasons as those asserted against claim 42. Appellant submits that claims 42, 56 and 62 recite statutory subject matter for at least the same reasons discussed above.”). Accordingly, we select claim 42 as the representative claim to decide the appeal of this rejection, with claims 43–60 and 62 standing or falling with claim 42. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Step 1 – Statutory Category

Claim 42 recites a series of steps, and, therefore, is a process. *See* Appeal Br. 20 (Claims App.).

Step 2A, Prong One – Recitation of Judicial Exception

The Examiner determines that claim 42 recites several abstract ideas. Final Act. 11–12. These abstract ideas include “managing [a] wagering game and game rules for providing an award to the user for participating in the game.” *Id.* (citing *In re Smith*, 815 F.3d 816 (Fed. Cir. 2016)).³

We agree with the Examiner that claim 42 recites an abstract idea. In *In re Smith*, 815 F.3d 816 (Fed. Cir. 2016), the court concluded that the claimed “method of conducting a wagering game” using playing cards was drawn to an abstract idea. The court likened the claimed method to the method of exchanging financial obligations at issue in *Alice*. *Id.* at 819. The court also found that the method of conducting a wagering game was similar to the subject matter held to be patent-ineligible in *Planet Bingo, LLC v. VKGS LLC*, 576 F. App’x 1005, 1007 (Fed. Cir. 2014) (determining that the claims recite methods for “managing a game of Bingo” “similar to the kind of ‘organizing human activity’ at issue in *Alice*”). *Smith*, 815 F.3d at 819. Additionally, in *In re Guldenaar*, 911 F.3d 1157, 1160 (Fed. Cir. 2018), the court concluded that the claimed “method of playing a dice game” is

³ The Examiner determined that another abstract idea recited in claim 1 is collecting information, analyzing the collected information, and displaying the collected and analyzed information. *Id.* (citing *Electric Power Group, LLC v. Alstom SA*, 830 F.3d 1350 (Fed. Cir. 2016)).

directed to a method of conducting a wagering game, which like the patent-ineligible claims in *Smith* is drawn to an abstract idea.

Appellant’s method as recited in claim 42 is, like the claims found to be patent-ineligible in *Smith*, *Guldenaar*, and *Planet Bingo*, directed to a method of conducting and managing a wagering game. The method of claim 42 comprises, in part, the limitations of: “causing to be displayed . . . a list comprising a plurality of games, each of the games selectable for initiating game play”; “receiving . . . a selection from a user of at least one game of the plurality of games”; and “receiving . . . from a user at least one game play command and a plurality of wagers during multiple game plays of the at least one game played.” These limitations involve wagering actions (selecting games to play and making commands and wagers) performed by the user via a gaming device. The user’s game play commands would depend on the rules of the game(s) that is/are selected. *See, e.g.*, Spec. ¶ 11 (“the game and wagering assistant system may . . . display a command on a screen to take a card in a blackjack game”). Conducting and managing wagering games relates to following rules or instructions, which is an example of managing personal behavior or relationships or interactions between people. This example is one of certain methods of organizing human activity identified in the 2019 Guidance. *See* 2019 Guidance at 52 n. 13.

Claim 42 further recites the limitations of “causing an indicia representing a value of wins or losses associated with the user to be displayed”; “after causing the indicia to be displayed, receiving information about a win or loss associated with the user”; and “responsive to receiving information about a win or loss, . . . updating the indicia displayed to reflect

an updated value of wins or losses.” Appeal Br. 20 (Claims App.). These limitations involve performing mathematical calculations to determine the updated value of the user’s wins or losses. According to the 2019 Guidance, performing mathematical calculations is a mathematical concept, which is one of the groupings of abstract ideas. *See* 2019 Guidance at 52 n. 12.

Claim 42 also recites “*determining . . . at least one complimentary good or service earned by a user based at least on information relating to the user playing the at least one game*”; and “*causing to be . . . simultaneously output to the user . . . the at least one complimentary good or service earned by the user and a monetary value of the at least one complimentary good or service earned by the user*”. Appeal Br. 20 (Claims App. (emphasis added)). We agree with the Examiner that these limitations involve “providing an award to the user for participating in the game.” Final Act. 12. This concerns following rules and managing a wagering game. The final “automatically causing” step of claim 42 also involves determining the monetary value of the earned complimentary good or service, which is based on performing mathematical calculations, an abstract idea.

Accordingly, claim 42 recites a method of organizing human activity, more particularly, managing personal behavior or relationships or interactions between people (including social activities, teaching, and following rules or instructions, which is an abstract idea. The claimed method involves conducting and managing wagering games using at least one computer comprising at least one gaming device. The user selects games to play and then makes game play commands and wagers during games plays of the selected games. These actions by the player involve “rules for playing games,” which is one type of method of organizing human

activity. *See Guldenaar*, 911 F.3d at 1160; *Smith*, 815 F.3d at 818–19. The recited method involves managing interactions between people following rules or instructions. *See* 2019 Guidance at 52 n. 13. And, additionally, we determine that the recited method recites the abstract idea of mathematical concepts.

Because we conclude claim 42 recites these abstract ideas, we proceed to Prong Two to determine whether the claim is “directed to” the judicial exception.

Step 2A, Prong Two – Practical Application

We next determine whether the recited judicial exception is integrated into a practical application of that exception 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. This evaluation requires an additional element or a combination of additional elements in the claim to apply, rely on, or use the judicial exception in a manner that imposes a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the exception.

Appellant contends that the Examiner fails to cite an appropriate court decision that supports the Examiner’s finding of an abstract idea. Appeal Br. 8. We disagree. The Examiner cites to *In re Smith*, which supports the determination that claim 42 recites an abstract idea. Final Act. 12; Ans. 5–6.

Appellant also contends that the claims improve computer related technology, making them patent-eligible. Appeal Br. 10–13. According to Appellant, the Specification “describes advantages in facilitating electronic gaming over a network with *determining and displaying both complimentary goods and services and the monetary value of the goods and services to a user device* which may help reduce the amount of activity or traffic over the network.” *Id.* at 11 (citing Spec. ¶¶ 59–62) (boldface omitted, emphasis added). Appellant seems to contend that this disclosure shows that “these techniques may help improve computer performance” and “may help reduce computer workload including computer resources such as memory resources, processor resources, and network resources such as network bandwidth.” *Id.* at 12.

We disagree with Appellant that the description in paragraphs 59–62 discloses that the claimed method improves computer related technology. Instead, we agree with the Examiner that “at best, the Specification recites different types of information that may be displayed on the user device which may be used by the player to make informed decisions,” and that the description does not provide “any information regarding how the additional requirements of displaying information will help reduce the amount of activity or traffic over the network.” Ans. 8–9. Moreover, we are not persuaded that the possible conservation of “computer resources” is an improvement in computer capabilities so as to constitute an improvement in computer functionality or in another technology.

Appellant also contends that the decision in *Core Wireless Licensing S.A.R.L. v. LG Electronics, Inc.*, 880 F.3d 1356 (Fed. Cir. 2018), “uniquely match[es] the facts” of this appeal (Appeal Br. 12) and explicitly held that an

improved graphical user interface is patent-eligible (*id.* at 13). According to Appellant, the court in this case determined that the invention improved “the efficiency of using the electronic devices.” *Id.* Appellant contends that “the claimed invention provides techniques for *determining and displaying both complimentary goods and services and the monetary value of the goods and services to a user device*” and “such techniques provide for an *improved user interface* which may increase the efficiency of using the electronic devices.” *Id.* (boldface omitted, emphasis added). Appellant thus asserts that the claimed invention is likewise patent eligible because it “provides a *user interface* which may *improve the efficiency of using the electronic devices.*” *Id.* (boldface omitted, emphasis added).

These contentions are unpersuasive. First, Appellant argues that its user interface “may” improve the efficiency of using electronic devices, but does not establish, with evidence, that its user interface actually does improve such efficiency.

Second, to the extent it is Appellant’s position that *Core Wireless* stands for the proposition that any user interface that improves *the efficiency of using electronic devices* is, for that reason, patent-eligible, we disagree. In *Core Wireless*, the court stated that “[t]he disclosed invention improves the efficiency of using the electronic devices.” *Core Wireless*, 880 F.3d at 1363. However, the court also explained that “[w]e also ask whether the claims are directed to a specific improvement in the capabilities of computing devices” (*id.* at 1361), and then determined that “the claims are directed to an improvement in the functioning of computers” (*id.* at 1363). Thus, in *Core Wireless*, the improved efficiency of using the electronic

devices was related to an identified improvement in the functioning of computers.

In *Trading Technologies International, Inc. v. IBG LLC*, 921 F.3d 1378 (Fed. Cir. 2019), the court addressed the patent eligibility of a method of displaying market information on a graphical user interface. The court determined that “the claims considered in light of the specification make clear that ‘the focus of the claimed advance over the prior art’ is *providing a trader with additional financial information to facilitate market trades, an abstract idea.*” *Id.* at 1384 (emphasis added). Further, the court stated, “Information, whether displayed in the form of price values or P&L values, is abstract. *SAP*, 898 F.3d at 1167.” *Id.* The court explained that “[t]he claims are focused on providing information to traders in a way that helps them process information more quickly . . . *not on improving computers or technology*” and “the claims here fail because arranging information along an axis *does not improve the functioning of the computer, make it operate more efficiently, or solve any technological problem.*” *Id.* (emphasis added). Likening the claims to those in *Electric Power*, the court stated, “the purported advance ‘is a process of gathering and analyzing information of a specified content, then displaying the results, and not any particular assertedly inventive technology for performing those functions.’” *Id.* Accordingly, *Trading Techs.* indicates that Appellant needs to show that its user interface provides an improvement in the functioning of a computer, or, in some other technology, to support its patent eligibility position.

Here, absent persuasive evidence to the contrary, we determine that claim 42 merely uses an electronics communication network including generic components (computers with electronic display screens and mobile

gaming devices) as a tool to perform the abstract idea. *See* MPEP § 2106.05(f). We agree with the Examiner that Appellant has not shown that the claimed method, which determines and displays complimentary goods and services and their monetary value to a user's display screen, provides either an improvement in the functioning of a computer or to any other technology or technical field.

Appellant also contends that the claims “do not preempt all ways of achieving the intended result because the claimed recitations are very specific and do not cover all possible approaches.” Appeal Br. 14 (boldface omitted). However, even if this contention is correct, we note “preemption may signal patent ineligible subject matter, [but] the absence of complete preemption does not demonstrate patent eligibility.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015). Accordingly, this argument is unpersuasive.

Here, we determine that, apart from the limitations reciting an abstract idea, claim 42 does not recite additional claim elements that integrate the judicial exception into a practical application of the exception. Accordingly, we proceed to determine whether the claim recites an “inventive concept.”

Step 2B – Inventive Concept

For Step 2B of the analysis, we determine whether the claim adds a specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field. *See* 2019 Guidance.

The Examiner concludes that claim 42 does not include any additional elements that are sufficient to amount to significantly more than the abstract idea itself. Final Act. 12–13. Instead, the Examiner determines that there is

no indication that the claimed combination of elements improves the functioning of a computer or any other technology. *Id.* at 13. Rather, the Examiner determines that the collective function of the elements merely provides conventional computer implementation where the computer is used as a tool to perform the abstract idea. *Id.*

Appellant contends that “the claims recite *specific computer operations* that allow the computer to perform a function that *conventional computers cannot perform.*” Reply Br. 3. However, Appellant provides no evidence to show that conventional computers *cannot* (i.e., are physically unable to) perform any function recited in claim 42. To the extent Appellant is contending that claim 42 is patent-eligible because it purportedly performs a novel function, we note “[t]he ‘novelty’ of . . . the . . . [claim] itself, is of no relevance in determining whether the subject matter of a claim falls within the § 101 categories of possibly patentable subject matter.” *See, e.g., Diamond v. Diehr*, 450 U.S. 175, 188–89 (1981).

We agree with the Examiner that the method recited in claim 42 merely uses a computer network including generic components as a tool to perform the abstract idea. The application of the abstract idea using generic computer components does not transform the claim into a patent-eligible application of the abstract idea. *Alice*, 573 U.S. at 212. Thus, we agree with the Examiner that these additional elements do not transform the abstract idea into a patent-eligible application of the abstract idea. Final Act. 13.

Accordingly, Appellant does not apprise us of error in the Examiner’s conclusion that claim 42 fails to recite an inventive concept that transforms the claim into a patent-eligible application of the abstract idea. Thus, we

sustain the rejection of claim 42 under 35 U.S.C. § 101. Claims 43–60 and 62 fall with claim 1.

Obviousness over Rowe '834, Rowe '320, and Mages

Appellant argues claims 42–48 and 52–62 together and presents specific argument for patentability for claim 42 only. *See* Appeal Br. 15. Accordingly, we decide the appeal of this rejection based on claim 42, with claims 43–48 and 52–62 standing or falling with claim 42.

Appellant contends that Rowe '834 and Rowe '320 fail to “disclose determining and displaying both *simultaneously* complimentary goods and services *and* the monetary value of the goods and services to *a user via an electronic display screen that was earned by the user,*” but rather, “describe a system that displays and prints comp information directed to a *supervisor via device PTD 86.*” Appeal Br. 15 (boldface omitted, emphasis added). Appellant also contends that ““the comp [being] displayed to the user’ cannot be used to teach both displaying the comp and displaying the value of the comp, or displaying them simultaneously.” *Id.*

The Examiner responds that Rowe '834 discloses an electronic display that presents the complimentary goods and services earned by the user. Ans. 11. In support, the Examiner reproduces Figure 14(a) of Rowe '834 to show that the system “simultaneously outputs under the ‘comp’ menu both the good and services (e.g., Food & Bev) and the associated monetary value (e.g., \$40.00).” *Id.* at 11–12. The Examiner also explains that Rowe '834 discloses that “different comps and an associated value (such as the size of the credit) or (quantity (such as number of goods) awarded is

also designated by the system.” *Id.* at 12 (citing Rowe ’834, Fig. 14a, ¶¶ 111, 130–136).

In the Reply Brief, Appellant presents no argument addressing this rejection, and thus, fails to apprise us of any error in the Examiner’s findings or reasoning. Accordingly, we sustain the rejection of claim 42 as unpatentable over Rowe ’834, Rowe ’320, and Mages. Claims 43–48 and 52–62 fall with claim 42.

Obviousness over Rowe ’834, Rowe ’320, Mages, and Walker

Obviousness over Rowe ’834, Rowe ’320, Mages, and Okada

Appellant relies solely on the dependency of claims 49 and 50 from claim 42 for patentability. Appeal Br. 15. Accordingly, we sustain the rejection of claim 49 as unpatentable over Rowe ’834, Rowe ’320, Mages, and Walker, and the rejection of claim 50 as unpatentable over Rowe ’834, Rowe ’320, Mages, and Okada, for the same reasons as for the rejection of claim 42 as unpatentable over Rowe ’834, Rowe ’320, and Mages.

Non-statutory, obviousness-type double patenting over Heaton

The Examiner determines that claims 42–60 and 62 would have been obvious over claims of Heaton. In support, the Examiner provides “[a] comparison of the claims . . . between the instantly claimed invention and the corresponding claims of [Heaton].” Final Act. 7. The Examiner’s “comparison” is in the form of a table, which indicates present claims 42 and 45–47 are compared to claim 1 of Heaton. *Id.* at 7–10. According to the Examiner:

Although the claims at issue are not identical, they are not patentably distinct from each other because they are directed towards providing game play with the same inventive feature of causing at least one complimentary good or service earned by the user and a value of the at least one complimentary good or service earned by the user. *The differences defined by the conflicting claims are merely a rearrangement of the subject matter defined in the patent.*

Id. at 10 (emphasis added).

In contrast, Appellant contends that the Examiner fails to show how *any* present claim corresponds to *any* claim of Heaton. Appeal Br. 16. We agree. The Examiner does not identify any “particular differences” between present claim 42 and claim 1 of Heaton that the Examiner finds “are merely a rearrangement of the subject matter defined in the patent.” We note, for example, that the Examiner’s comparative table does not explicitly address the limitations in claim 42 of “causing an indicia representing a value of wins or losses associated with the user to be displayed at the electronic display screen” and “after causing the indicia to be displayed, receiving information about a win or loss associated with the user.” *See* Appeal Br. 20 (Claims App.). Nor does the Examiner indicate which limitations in claim 42 would have been obvious over the claims of Heaton. Accordingly, the Examiner does not establish a prima facie case of obviousness for claim 42. Furthermore, the Examiner does not address the limitations recited in claims 44, 48–60, and 62, and thus, does not establish a prima facie case of obviousness of any one of these claims over Heaton’s claims. Accordingly, we do not sustain the rejection of claims 42–60 and 62 on the ground of non-statutory, obviousness-type double patenting as unpatentable over claims 1–25 of Heaton.

DECISION

The rejection of claims 42–60 and 62 under 35 U.S.C. § 101 as directed to patent-ineligible subject matter is affirmed.

The rejection of claims 42–48, 52–60, and 62 under 35 U.S.C. § 103(a) as unpatentable over Rowe '834, Rowe '320, and Mages is affirmed.

The rejection of claim 49 under 35 U.S.C. § 103(a) as unpatentable over Rowe '834, Rowe '320, Mages, and Walker is affirmed.

The rejection of claim 50 under 35 U.S.C. § 103(a) as unpatentable over Rowe '834, Rowe '320, Mages, and Okada is affirmed.

The rejection of claims 42–60 and 62 on the ground of non-statutory, obviousness-type double patenting as unpatentable over claims 1–25 of Heaton is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended according to 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED