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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JAMES P. JANNIELLO, STEVEN W. LUNDBERG, and ANDRE L. MARAIS

Appeal 2018-008542
Application 14/535,123
Technology Center 3700

Before MICHAEL C. ASTORINO, BRUCE T. WIEDER, and ROBERT J. SILVERMAN, *Administrative Patent Judges*.

ASTORINO, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant[1] appeals from the Examiner's decision to reject claims 1–15. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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[1] We use the word "Appellant" to refer to "applicant" as defined in 37 C.F.R. § 1.42. The Appellant identifies the real party in interest as Numerals LLC. Appeal Br. 3.

STATEMENT OF THE CASE

Subject Matter on Appeal

The Appellant's invention "relates generally to electronic gaming, and more specifically, in one example, to driving gaming activity based on work events, including work tasks, work results, and work status." Spec. ¶ 2.

Claims 1, 6, and 11 are the independent claims on appeal. Claim 6, reproduced below, is illustrative of the claimed subject matter.

> 6. A method for performing a work-driven game, comprising:
>
> obtaining, using a hardware processor, an indication of a completion of a performance of a work event from a work processing system associated with a user, the work event contributing to a production of a work product; and
>
> awarding, using the hardware processor, a gaming asset associated with the game in a game processing system in response to the indication of the completion of the performance of the work event from the work processing system, the gaming asset advancing a state of a user during the game toward achieving a gaming objective.

Rejections

Claims 1–15 are rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter.

Claims 1–15 are rejected under 35 U.S.C. § 102(a)(1) as anticipated by Stoner (US 4,611,996, iss. Sept. 16, 1986).

ANALYSIS

Patent Eligibility

The Appellant argues claims 1–15 as a group. Appeal Br. 10–21. We select claim 6 as representative of the group with the remaining claims standing or falling therewith. *See* 37 C.F.R. 41.37(c)(1)(iv).

35 U.S.C. § 101 Framework

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. *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 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.*

After the Appellant's briefs were filed and the Examiner's Answer mailed, 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"). That guidance revised the USPTO's examination procedure with respect to the first step of the *Mayo*/*Alice* framework by (1) providing groupings of subject matter that are considered an abstract idea; and (2) clarifying that a claim is not "directed to" a judicial exception if the judicial exception is integrated into a practical application of that exception. *Id.* at 50. The 2019 Revised Guidance, by its terms, applies to all applications, and to all patents resulting from applications, filed before, on, or after January 7, 2019. *Id.* Under the 2019 Revised 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) (9th Ed., Rev. 08.2017, Jan. 2018)).

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 2019 Revised Guidance, 84 Fed Reg. at 54, 56.

Step One of the Mayo/Alice Framework

Under the first step of the *Mayo*/*Alice* framework, the Examiner determines that claim 6 is "directed to 'electronic gaming, and more specifically, in one example, to driving gaming activity based on work events, including work tasks, work results, and work status[.]'" Final Act. 4 (citing Spec. ¶ 2). The Examiner determines that this concept involves "a set of rules for conducting a game." *Id.* at 5. When viewed through the lens of the 2019 Revised Guidance, the Examiner's analysis depicts the claimed subject matter as a "[c]ertain method[] of organizing human activity—. . . managing personal behavior or relationships or interactions between people (including social activities, teaching, and following rules or instructions)" under *Prong One of Revised Step 2A*. 2019 Revised Guidance, 84 Fed. Reg. at 52.

The Appellant characterizes claim 6 as "reward[ing] an asset in a gaming environment (the game processing system) based on a work event from outside the gaming environment and in a work environment (the work processing system)." Appeal Br. 12 (emphasis omitted).

Before determining whether the claims at issue are directed to an abstract idea, we first determine to what the claims are directed. The Federal Circuit has explained that "the 'directed to' inquiry applies a stage-one filter to claims, considered in light of the specification, based on whether 'their

character as a whole is directed to excluded subject matter.'" *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016) (quoting *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015)). It asks whether the focus of the claims is on a specific improvement in relevant technology or on a process that itself qualifies as an "abstract idea" for which computers are invoked merely as a tool. *See id.* at 1335–36. Here, it is clear from the Specification, including the claim language, that claim 6 focuses on an abstract idea, and not on any improvement to technology and/or a technical field.

The Specification provides for "METHODS, SYSTEMS, AND APPARATUS FOR WORK-DRIVEN GAMING." Spec., Title. In the "Background" section, the Specification provides for an electronic gaming system/processor that accepts information from inputs (i.e., data) from a game player using an input device (e.g., a joystick, an electronic mouse), and based on the data awarding the game player with a gaming asset, initiating a gaming action, and/or achieve a gaming objective. *See id.* ¶ 4. "[A] 'gaming asset' may comprise a virtual asset, a clue, an action within a gaming environment, an input to a gaming environment, an advancement to another level in a game, an action of an avatar, and the like." *Id.* ¶ 18. The Specification describes, "a 'work-driven' game is a game that is driven partially or completely based on work events" and may include games of skill, chance, intellect, etc. *Id.* ¶ 20. For example, based upon the completion of a work task, a player maybe awarded a letter in a conventional phrase guessing game. *See id.* ¶¶ 19, 22, 56–60, Figs. 6, 8.

Consistent with the disclosure, claim 6 recites "[a] method for performing a work-driven game, comprising" the steps of *obtaining data*,

(i.e., "obtaining . . . an indication of a completion of a performance of a work event from a work processing system associated with a user, the work event contributing to a production of a work product") and *awarding a gaming asset based on the obtained data* (i.e., "awarding . . . a gaming asset associated with the game in a game processing system in response to the indication of the completion of the performance of the work event from the work processing system, the gaming asset advancing a state of a user during the game toward achieving a gaming objective").

When considered collectively and under the broadest reasonable interpretation of the claim's limitations, we agree with the Examiner that the claim recites a method for driving gaming activity based on work events, i.e., "a set of rules for conducting a game." The limitations of obtaining and awarding are functionally recited without any detail regarding how the results are accomplished, i.e., in what way(s) technologically or by what algorithm, and thus can be done by any known method.

The Specification describes the "game" as "conventional." Spec. ¶¶ 18, 20, 22, 33, 35–36, 45. The "hardware processor" is not structurally defined in claim 6 or in the Specification. The Specification describes a "hardware-implemented module," which includes a generic processor. *See id.* ¶¶ 62–68; *see also id.* ¶¶ 69–74. The "work processing system" and the "game processing system" are described functionally in claim 6 and the Specification, and are generic. *See* Ans. 12–13. The Specification describes, "work processing systems 112 may collaborate with a user or group of users in performing work related tasks." Spec. ¶ 26, Fig. 1; *see also id.* ¶¶ 29–31 ("work interface module 210 may obtain the work events from a wide variety of conventional work-based systems and

databases"). The Specification describes, "game processing systems 108 may be informed of and/or detect a work event, such as an update to a status of a work item, a change in a status of a work item, a milestone for a work item, and the like." *Id.* ¶ 27, Fig. 1. The work processing system and the game processing system are able to communicate by use of a network. *See id.* ¶ 28, Fig. 1. Additionally, awarding gaming assets is described in the Specification as part of generic electronic gaming. *See id.* ¶ 4. The Specification describes, "a 'gaming asset' may comprise a virtual asset, a clue, an action within a gaming environment, an input to a gaming environment, an advancement to another level in a game, an action of an avatar, and the like." *Id.* ¶ 18. Awarding a gaming asset may be performed by mapping a work event to gaming input based on a rule base and/or translating a work event to gaming input by use of a formula. *See id.* ¶¶ 33, 37–39, 43, 46, Figs. 3A–C.

A method for driving gaming activity based on work events, i.e., "a set of rules for conducting a game" is similar to the concept of rules for playing a game.[2] *In re Smith*, 815 F.3d 816 (Fed. Cir. 2016), held a claimed "method of conducting a wagering game" using a deck of playing cards was drawn to an abstract idea. *In re Marco Guldenaar Holding B.V.*, 911 F.3d 1157 (Fed. Cir. 2018), held that a method of playing a dice game with a wager was an abstract concept. In that case, it was held that claims directed to "rules for playing a dice game" were directed to an abstract concept. *Id* at

[2] We note that "[a]n abstract idea can generally be described at different levels of abstraction." *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1240 (Fed. Cir. 2016). The Board's "slight revision of its abstract idea analysis does not impact the patentability analysis." *Id.* at 1241.

1160, 1161. Accordingly, we conclude that claim 6 recites rules for playing a game, which is a way of following rules or instructions, one of the certain methods of organizing human activity identified in the 2019 Revised Guidance, 84 Fed. Reg. at 52, and thus an abstract idea.

The Appellant argues that the subject matter of claim 6 is not similar to managing/playing the game of Bingo in *Planet Bingo, LLC v. VKGS LLC*, 576 F. App'x 1005 (Fed. Cir. 2014). Appeal Br. 12–13. The Appellant's argument is not persuasive. The Specification of the present invention instructs that work-driven games may include games of chance. Spec. ¶ 20. The game of Bingo is a game of chance.

Under *Step 2A, Prong Two* of the 2019 Revised Guidance, 84 Fed. Reg. at 54, we look to whether the claims "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 judicial exception," i.e., "integrates a judicial exception into a practical application." Here, the Appellant contends, "[l]ike the claims of *Enfish*, the claims of the present case have a specific asserted improvement in computer capabilities and they do not simply invoke the computer as a tool." Appeal Br. 15 (emphasis added). The Appellant asserts that claim 6 recites an improvement to the functioning of the processing system itself by the use of the claimed integration of the work processing system and the game processing system to provide an enhanced work and gaming experience. *See id.* at 10 (citing *BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1351 (Fed. Cir. 2016)). Similarly, the Appellant argues that *Planet Bingo* "does not stand for the proposition that all claims that somehow provide a game on a computer are directed to an

abstract idea." *Id.* at 13. When viewed through the lens of the 2019 Revised Guidance, the Appellant contends that under *Prong Two*, the elements of the claim integrate the abstract idea into a practical application because the combination of the elements "reflects an improvement in the functioning of a computer, or an improvement to other technology or technical field." 84 Fed. Reg. at 55 (citing *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014)). We disagree.

In *Enfish*, the court held that the focus of the claims was to "a specific improvement to the way computers operate, embodied in the self-referential table." 822 F.3d at 1336. Specifically, "the claims [were] not simply directed to *any* form of storing tabular data, but instead [were] specifically directed to a *self-referential* table for a computer database." *Id.* at 1337. The Specification provided that "the self-referential table function[ed] differently than conventional database structures" (*id.*) and improved "the way a computer stores and retrieves data in memory" (*id.* at 1339).

Claim 6, however, is not focused on how databases and tables function. Under the claimed method information is obtained and a gaming asset is awarded by use of a generic processor. Although "the work-game interface processing module 214 may generate the gaming input by mapping and/or translating a work event to gaming input" (Spec. ¶ 33), claim 6 does not require this interface. The "focus" of the claim is not "on the specific asserted improvement in computer capabilities" (*Enfish,* 822 F.3d at 1336), but rather on using the hardware processor as a tool to implement the rules of the game, including awarding a gaming asset based on obtained data. *See Affinity Labs of Tex., LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1259 (Fed. Cir. 2016) ("The Supreme Court and [the Federal Circuit] have repeatedly

made clear that merely limiting the field of use of the abstract idea to a particular existing technological environment does not render the claims any less abstract."). This alleged improvement lies in the abstract idea itself (i.e., the rules of conducting/playing a game), not to any technological improvement. *See BSG Tech LLC v. BuySeasons, Inc.*, 899 F.3d 1281, 1287–88 (Fed. Cir. 2018).

Thus, we are not persuaded of error in the Examiner's determination that claim 6 is directed to an abstract idea.

Step Two of the Mayo/Alice Framework

Under the second step in the *Alice* framework (corresponding to *Step 2B* of the 2019 Revised Guidance), we find supported the Examiner's determination that claim 6's limitations, taken individually or as an ordered combination, do not amount to significantly more than the judicial exception because, the claims lack additional features that are more than well-understood, routine, conventional activity. Final Act. 6. The Examiner finds that the claimed recitations of the "method for performing a work-driven game, comprising" the steps of "obtaining, using a hardware processor, an indication of a completion of a performance of a work event from a work processing system associated with a user, the work event contributing to a production of a work product" and "awarding, using the hardware processor, a gaming asset associated with the game in a game processing system in response to the indication of the completion of the performance of the work event from the work processing system, the gaming asset advancing a state of a user during the game toward achieving a gaming objective" are generic data handling. *See* Ans. 12–15.

The Appellant argues that "[t]he integration of a work processing system and a game processing system is a nonconventional and non-generic arrangement of elements." Appeal Br. 18; *see* Reply Br. 6–7.

Taking the claimed elements separately, the functions performed by the hardware processor are purely conventional. A generic hardware processor, a generic work processing system, and a generic game processing system implement the method (*see supra*) and operate in their ordinary and conventional capacities to perform the well-understood, routine, and conventional functions of obtaining data and awarding a gaming asset based on the obtained data. *See Elec. Power*, 830 F.3d at 1355 (gathering, sending, monitoring, analyzing, selecting, and presenting information does not transform the abstract process into a patent-eligible invention); *In re TLI Commc'ns LLC Patent Litig.*, 823 F.3d 607, 612 (Fed. Cir. 2016) ("storing, receiving, and extracting data" are generic computer functions); *SAP America, Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1169–70 (Fed. Cir. 2018) ("selecting certain information, analyzing it using mathematical techniques, and reporting or displaying the results of the analysis" were "basic functions" of a computer).

Considered as an ordered combination, the components of claim 6 add nothing that is not already present when the steps are considered separately. The sequence of obtaining data and awarding a gaming asset based on the obtained data is equally generic and conventional or otherwise held to be abstract. *See Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1341 (Fed. Cir. 2017) (holding that the sequence of collecting, organizing, identifying, mapping, organizing, defining, and detecting was abstract).

The Appellant contends that the integration of a work processing system and a game processing system is not shown in the prior art and therefore not well understood, routine, and conventional activity. *See* Appeal Br. 18, 21. We disagree. An abstract idea does not transform into an inventive concept just because the prior art does not disclose or suggest it. *See Mayo*, 566 U.S. at 78. "Groundbreaking, innovative, or even brilliant discovery does not by itself satisfy the § 101 inquiry." *Ass'n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 591 (2013). Indeed, "[t]he '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. 188–89; *see also Mayo*, 566 U.S. at 91 (rejecting "the Government's invitation to substitute §§ 102, 103, and 112 inquiries for the better established inquiry under § 101").

The Appellant contends that the Examiner's determination does not comply with the standards of evidence set forth in the Administrative Procedure Act and *Berkheimer v. HP Inc.*, 881 F.3d 1360 (Fed. Cir. 2018). *See* Appeal Br. 19–21. We disagree. The Examiner cites intrinsic evidence (*see* Ans. 6, 12–14) for the findings and determinations made.

Thus, we are not persuaded of error in the Examiner's determination that the limitations of claim 6 do not transform the claim into significantly more than the abstract idea.

The Appellant's other arguments, including those directed to now-superseded USPTO guidance (*see, e.g.*, Appeal Br. 10, 11, 12, 13, 16), have been considered but are not persuasive of error. *See* 2019 Revised Guidance, 84 Fed. Reg. at 51 ("Eligibility-related guidance issued prior to

the Ninth Edition, R–08.2017, of the MPEP (published Jan. 2018) should not be relied upon.")).

For at least the reasons above, we sustain the Examiner's rejection under 35 U.S.C. § 101 of independent claim 6. Claims 1–5 and 7–15 fall with claim 6. *See* 37 C.F.R. 41.37(c)(1)(iv).

Anticipation

Claim 6 calls for a step of awarding a gaming asset that advances a state of a user during the game toward achieving a gaming objective. Appeal Br., Claims App. Independent claims 1 and 11 each call for a similar requirement. *Id.*

The Examiner finds Stoner discloses the awarding step of claim 6 and the similar requirement of independent claims 1 and 11. Final Act. 8–9, 10 (citing Stoner col. 3, ll. 59–65, col. 4, ll. 13–16). The Examiner's finding is based on Stoner's disclosure of a teaching machine that motivates students by rewarding them with a chance to play a video game for answering a question correctly. *See* Stoner Abstract, col. 1, ll. 7–11, col. 3, ll. 59–65. Stoner discloses that the reward may include "more exciting game segments." *Id.* at col. 4, ll. 13–16.

The Examiner determines that "one of the ordinary skill in the art would agree that 'more exciting game segments' in Stoner certainly can encompass a gaming asset that 'advance[s] a state of a user during the game toward achieving a gaming objective.'" Ans. 15 (emphasis omitted). Additionally, the Examiner determines that the claims are written broadly and lack detail as "to how the gaming asset advances a state of a user during the game toward achieving a gaming objective." *Id.* Here, the Examiner

suggests that the lack of specificity in the claims concerning the award does not require specificity in Stoner's disclosure beyond the description that a reward may include "more exciting game segments." We note the Examiner does not elaborate on the meaning of Stoner's description of a reward of "more exciting game segments."

The Appellant argues that Stoner does not teach the awarding step of claim 6 and the similar requirements of claims 1 and 11. *See* Appeal Br. 22–24; Reply Br. 8–10. The Appellant contends that the chance to play a video game does not advance a state of a user during the game toward achieving a gaming objective. Appeal Br. 23. The Appellant also contends that "'more exciting game segments' do not necessarily . . . advance a state of a user toward achieving a gaming objective." *Id.*; *see also* Reply Br. 9 ("For example, regarding a phrase guessing game, the present disclosure states that a 'user may be awarded, for example, one or more letters of the phrase in response to a work event.'" (emphasis omitted)). We agree. Stoner's description of having a reward of "more exciting game segments" may include a gaming asset advancing a state of a user during the game toward achieving a gaming objective, but such is not necessarily the case — i.e., it is not inherent.

Therefore, we determine that the Examiner's finding that Stoner discloses awarding a gaming asset that advances a state of a user during the game toward achieving a gaming objective as called for by independent claims 1, 6, and 11 is supported inadequately. Thus, we do not sustain the Examiner's rejection of independent claims 1, 6, and 11, and dependent claims 2–5, 7–10, and 12–15.

CONCLUSION

We AFFIRM the Examiner's decision rejecting claims 1–15 under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter.

We REVERSE the Examiner's decision rejecting claims 1–15 under 35 U.S.C. § 102(a)(1) as anticipated by Stoner.

In summary:

Claims Rejected	35 U.S.C. §	Reference/Basis	Affirmed	Reversed
1–15	101	Eligibility	1–15	
1–15	102(a)(1)	Stoner		1–15
Overall Outcome			1–15	

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