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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JAMES BONGIORNO

Appeal 2018-008780
Application 13/691,821
Technology Center 3600

Before MICHAEL C. ASTORINO, BRUCE T. WIEDER, and
KENNETH G. SCHOPFER, *Administrative Patent Judges*.

WIEDER, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant¹ seeks review under 35 U.S.C. § 134 from the Examiner's final rejection of claims 1, 2, 4–17, 19–21, and 35–42. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

CLAIMED SUBJECT MATTER

Appellant's "invention relates to methods and systems of planning and executing a vacation or travel itinerary, and more particularly to

¹ 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 James Bongiorno. (Appeal Br. 3.)

software and a portable electronic unit, which may be dedicated to such planning and travel assistance at the destination.” (Spec. 1–2.)

Claims 1, 35, and 41 are the independent claims on appeal. Claim 1 is illustrative. It recites:

1. A computer program product for a method of planning a travel itinerary for use at a destination and for executing the planned travel itinerary at the destination, the computer program product comprising: a tangible non-transitory computer readable storage medium having computer readable program code embodied thereon, the computer readable program code, when executed by a processor, configured for:

storing a database of travel information about the destination in said storage medium, said database of travel information comprising tour sites at the destination;

storing, in said storage medium, a respective indoor-outdoor rating for each said tour site created by assessing each of said tour sites, each said indoor-outdoor rating comprising a majority percentage of said respective tour site comprising indoor site features or a majority percentage of said respective tour site comprising outdoor site features;

providing a user access to said database of travel information by displaying a planning graphical user interface screen configured for selecting of a first itinerary template, and selecting of one or more additional itinerary templates from a plurality of said additional itinerary templates, each said plurality of additional itinerary templates comprising a plurality of said tour sites listed therein and relating to a category of said additional template, said first itinerary template configured for entering of:

a number of days for said itinerary,
an arrival city and a departure city at the destination,
a start-time and an end-time for a number of desired touring hours for each said number of days, and
a tour intensity level for touring for each of said number of days at the destination;

providing a sequence of tour sites forming a complete travel itinerary for said number of days, using a portion of said

tour sites listed in each said selected one or more additional itinerary templates, said complete travel itinerary comprising said sequence of tour sites being optimized to include as many said tour sites as possible in said touring hours, for each of said number of days, according to said tour intensity level;

providing the user access to a weather detour graphical user interface screen configured for selecting one or more blocks of time, each being affected by inclement weather during said desired touring hours of said number of days;

reforming said complete travel itinerary for detouring from said sequence of tour sites, by replacing at least a portion of said sequence of tour sites, at least during said one or more blocks of time affected by inclement weather, by replacing said sites having said majority percentage of outdoor site features for its indoor-outdoor rating, with other tour sites having a highest said majority percentage of indoor site features for its indoor-outdoor rating; and

communicating with a GPS receiver for receiving directions to any of said tour sites of said reformed travel itinerary during executing of said reformed travel itinerary at the destination.

REJECTIONS

Claims 1, 2, 4–17, 19–21, and 35–42 are rejected under 35 U.S.C. § 112(a) as failing to comply with the written description requirement.

Claims 1, 2, 4–17, 19–21, and 35–42 are rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.

Claims 1, 2, 4, 5, 7–13, 17, and 19–21 are rejected under 35 U.S.C. § 103(a) as unpatentable over Whitsett (US 2009/0216633 A1, pub. Aug. 27, 2009), Shuchman (US 8,082,186 B2, iss. Dec. 20, 2011), Ben-Yehuda (US 2008/0046298 A1, pub. Feb. 21, 2008), and Purang (US 2004/0215699 A1, pub. Oct. 28, 2004).

Claim 6 is rejected under 35 U.S.C. § 103(a) as unpatentable over Whitsett, Ben-Yehuda, Shuchman, Purang, and Aycock (US 5,765,138, iss. June 9, 1998).

Claim 14 is rejected under 35 U.S.C. § 103(a) as unpatentable over Whitsett, Ben-Yehuda, Shuchman, Purang, and Heideman (US 6,915,204 B1, iss. July 5, 2005).

Claim 15 is rejected under 35 U.S.C. § 103(a) as unpatentable over Whitsett, Ben-Yehuda, Shuchman, Purang, Randall (US 2006/0184538 A1, pub. Aug. 17, 2006), and Jonsson (US 2011/0137437 A1, pub. June 9, 2011).

Claim 16 is rejected under 35 U.S.C. § 103(a) as unpatentable over Whitsett, Ben-Yehuda, Shuchman, Purang, Chavez (US 2010/0121563 A1, pub. May 13, 2010), and Kent (US 2010/0057435 A1, pub. Mar. 4, 2010).

Claims 35, 37–39, and 41 are rejected under 35 U.S.C. § 103(a) as unpatentable over Whitsett, Ben-Yehuda, and Shuchman.

Claims 36 and 42 are rejected under 35 U.S.C. § 103(a) as unpatentable over Whitsett, Shuchman, Ben-Yehuda, and Purang.

Claim 40 is rejected under 35 U.S.C. § 103(a) as unpatentable over Whitsett, Shuchman, Ben-Yehuda, and Aycock.

ANALYSIS

The § 112(a) rejection

The Examiner finds that each independent claim includes “the limitation ‘a respective indoor-outdoor rating for each said tour site created by assessing each of said tour sites, each said indoor-outdoor rating comprising a majority percentage of indoor site features or a majority

percentage of said respective tour site comprising outdoor site features,” and that this claim language lacks written description support. (Final Action 9.) Specifically, the Examiner finds that “there is no written content as to *how or what specific calculations or steps are performed in the assessment . . . in order to calculate the indoor-outdoor rating result.*” (*Id.* at 10–11.)

Appellant disagrees and argues that “the indoor-outdoor ‘rating’ of the ‘sites’ is defined ‘*in terms of a percentage to which they may fairly be considered as being either mostly indoor or mostly outdoor in nature.*” (Reply Br. 2 (quoting Spec. 73).) Appellant further argues:

The fact that different travel experts making the same evaluation may arrive at slightly different conclusions/ratings as to whether “*bad weather that would impair enjoyment*” of the desirable “*outdoor activities*” and/or the “*degree to which each of the sites in the selected itinerary templates may be categorized as being an ‘outdoor’ site or an ‘indoor’ site*” (p. 73, lns. 5-10) does not mean that persons skilled in the art would not recognize in the disclosure a description of the invention defined by the claims.

(*Id.*) Appellant also cites to the disclosures in Table 1 of the Specification of certain travel sites and their associated “Indoor/Outdoor Percentage (%)” ratings, e.g., “Imperial Forums. . . 60% Indoor” and “Theatre of Marcellus. . . 60% Outdoor.” (*Id.* (citing Spec. Table 1).)

The test for sufficiency of a written description is “whether the disclosure clearly ‘allow[s] persons of ordinary skill in the art to recognize that [the inventor] invented what is claimed.’” *Ariad Pharms., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1351 (Fed.Cir.2010) (en banc) (quoting *Vas-Cath Inc. v. Mahurkar*, 935 F.2d 1555, 1562–63 (Fed.Cir.1991)). The disclosure must “reasonably convey[] to those skilled in the art that the inventor had possession of the claimed subject matter as of the filing

date.” *Id.* at 1351. Possession means “possession as shown in the disclosure” and “requires an objective inquiry into the four corners of the specification from the perspective of a person of ordinary skill in the art.” *Id.*

Crown Packaging Tech., Inc. v. Ball Metal Beverage Container Corp., 635 F.3d 1373, 1380 (Fed. Cir. 2011). Additionally, “the level of detail required to satisfy the written description requirement varies depending on the nature and scope of the claims and on the complexity and predictability of the relevant technology.” *Ariad Pharm., Inc.*, 598 F.3d at 1351. This inquiry is a question of fact. *Id.*

Here, the rejection is based on the lack of “written content as to *how or what specific calculations or steps are performed in the assessment . . .* in order to calculate the indoor-outdoor rating result.” (Final Action 10–11.) But the Specification teaches that the assessment for the rating is to be “in terms of a percentage to which they may fairly be considered as being either mostly indoor or mostly outdoor.” (Spec. 73.) In other words, the rating, and hence the assessment, is described in terms of “fairly considered,” rather than a measure requiring specific calculations or steps.

In view of the above, we are persuaded that the Specification would have conveyed to one of ordinary skill in that art that Appellant possessed the claim element of “a respective indoor-outdoor rating for each said tour site created by assessing each of said tour sites, each said indoor-outdoor rating comprising a majority percentage of said respective tour site comprising indoor site features or a majority percentage of said respective tour site comprising outdoor site features.” Therefore, we will reverse this rejection.

The § 101 rejection

Appellant does not separately argue independent claims 1, 35, and 41. We select claim 1 as representative. Claims 35 and 41 will stand or fall with claim 1. See 37 C.F.R. § 41.37(c)(1)(iv).

“Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.” 35 U.S.C. § 101. Section 101, however, “contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014) (quoting *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)).

Alice applies a two-step framework, earlier set out in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012), “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice*, 573 U.S. at 217.

Under the two-step framework, it must first be determined if “the claims at issue are directed to a patent-ineligible concept.” *Id.* at 218. If the claims are determined to be directed to a patent-ineligible concept, e.g., an abstract idea, then the second step of the framework is applied to determine if “the elements of the claim . . . contain[] an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Id.* at 221 (internal quotation marks omitted) (citing *Mayo*, 566 U.S. at 72–73, 79).

With regard to step one of the *Alice* framework, we apply a “directed to” two-prong test to: 1) evaluate whether the claim recites a judicial exception, and 2) if the claim recites a judicial exception, evaluate whether the claim “appl[ies], rel[ies] on, or use[s] 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.” *See* USPTO, 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50, 54 (Jan. 7, 2019) (hereinafter “2019 Guidance”).

Here, the Examiner determines that claim 1 is “directed to the abstract idea of collecting, analyzing, displaying, and manipulating travel itinerary data, categorized as an idea of itself and a method of organizing human activity.” (Final Action 11 (emphasis omitted).)

Appellant disagrees and argues that claim 1 is “drawn to inventive programming that utilizes two different highly structured graphical user interface screens- the ‘planning graphical user interface screen’ and the ‘weather detour graphical user interface screen.’” (Appeal Br. 29.)

Under step one of the *Alice* framework, we “look at the ‘focus of the claimed advance over the prior art’ to determine if the claim’s ‘character as a whole’ is directed to excluded subject matter.” *Affinity Labs of Texas, LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1257 (Fed. Cir. 2016) (quoting *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016)).

The “directed to” inquiry . . . cannot simply ask whether the claims *involve* a patent-ineligible concept, because essentially every routinely patent-eligible claim involving physical products and actions *involves* a law of nature and/or natural phenomenon Rather, 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.” *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015).

Enfish, LLC v. Microsoft Corp., 822 F.3d 1327, 1335 (Fed. Cir. 2016). In other words, the first step of the *Alice* framework “asks whether the focus of the claims is on the specific asserted improvement in [the relevant technology] or, instead, on a process that qualifies as an ‘abstract idea’ for which computers are invoked merely as a tool.” *Id.* at 1335–36; *see also* 2019 Guidance at 54–55.

The Specification provides evidence as to what the claimed invention is directed. In this case, the Specification discloses that the invention relates to “planning and executing a vacation or travel itinerary.” (Spec. 1.) Claim 1 provides further evidence. Claim 1 recites “[a] computer program product for a method of planning a travel itinerary . . . configured for: storing a database of travel information . . . comprising tour sites,” “storing . . . a respective indoor-outdoor rating for each said tour site,” “providing a user access to said database . . . by displaying a planning graphical user interface screen,” “providing a sequence of tour sites forming a complete travel itinerary,” “providing the user access to a weather detour graphical user interface,” “reforming said complete travel itinerary for detouring from said sequence of tour sites,” and “communicating with a GPS receiver for receiving directions to any of said tour sites of said reformed travel itinerary.”

In short, claim 1 recites storing information (including certain ratings of tour sites), providing access to the information (by displaying an interface screen), providing information (a sequence of tour sites “optimized to include as many said tour sites as possible”), providing access to another

interface screen (weather-related), reforming the sequence of tour sites, and communicating with a GPS receiver.

Appellant argues that claim 1 recites patent-eligible subject matter because “[t]he ‘planning graphical user interface screen’ and the ‘weather detour graphical user interface screen’ each require user inputs and each utilizes particular rules, similar to the claims found patent eligible in [*McRO, Inc. v. Bandai Namco Games America Inc.*, 837 F.3d 1299 (Fed. Cir. 2016)].” (Appeal Br. 29 (emphasis omitted).) We disagree. “The claimed improvement [in *McRO*] was to how the physical display operated (to produce better quality images), unlike (what is present here) a claimed improvement in [the abstract idea] with no improved display mechanism.” *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1167 (Fed. Cir. 2018).

Additionally, claim 1 simply recites a generic “computer readable storage medium,” a generic “processor,” a generic “GPS receiver,” and generic “graphical user interfaces.” (See Spec. 23–24, 49, 75–77.) The claim limitations do not recite technological implementation details for any of the steps. Claim 1 merely recites functional results to be achieved by any means, e.g., claim 1 does not recite how the “sequence of tour sites forming a complete travel itinerary” is determined or how the travel itinerary is reformed. The claim does not recite any specific asserted improvement to computer technology.

In cases involving software innovations, such as we have here, the inquiry as to whether the claims are directed to an abstract idea “often turns on whether the claims focus on ‘the specific asserted improvement in computer capabilities ... or, instead, on a process that qualifies as an “abstract idea” for which computers are invoked merely as a tool.’” *Finjan*,

Inc. v. Blue Coat Sys., Inc., 879 F.3d 1299, 1303 (Fed. Cir. 2018) (quoting *Enfish, LLC*, 822 F.3d at 1335–36). Here, the storage medium, processor, graphical user interfaces, and GPS receiver are invoked merely as tools.

Even if we consider claim 1 to be limited to a particular technological environment, “limiting the claims to [a] particular technological environment . . . is, without more, insufficient to transform them into patent-eligible applications of the abstract idea at their core.” *Elec. Power Grp.*, 830 F.3d at 1354. Moreover, the asserted improvement is to the information provided, i.e., the travel itinerary, reformed travel itinerary, and directions to the sites. But “[n]o matter how much of an advance in the . . . field the claims recite, the advance lies entirely in the realm of abstract ideas, with no plausibly alleged innovation in the non-abstract application realm.” *SAP America, Inc.*, 898 F.3d at 1163.

We also do not find persuasive Appellant’s argument that claim 1 is “drawn to inventive programming that utilizes two different highly structured graphical user interface screens- the ‘planning graphical user interface screen’ and the ‘weather detour graphical user interface screen.’” (Appeal Br. 29.)

Claim 1 does not recite “a particular way of programming or designing the software . . . , but instead merely claim[s] the resulting [method].” *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1241 (Fed. Cir. 2016). In other words, claim 1 does not recite inventive programming, but simply recites desired results. Claim 1 is “focused on providing information to [the user] . . . , not on improving computers or technology.” *Trading Techs. Int’l, Inc. v. IBG LLC*, 921 F.3d 1378, 1384 (Fed. Cir. 2019) (hereinafter “*Trading Techs. IP*”). “Like *Electric Power*, 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.’ 830 F.3d at 1354. We thus conclude that the claim[is] directed to an abstract idea.” *Trading Techs. II*, 921 F.3d at 1385.

Claim 1 “do[es] not improve the functioning of the computer, make it operate more efficiently, or solve any technological problem. Instead, [it] recite[s] a purportedly new arrangement of generic information that assists [users] in processing information more quickly,” i.e., in planning a travel itinerary. *Trading Techs. Int’l, Inc. v. IBG LLC*, 921 F.3d 1084, 1093 (Fed. Cir. 2019) (hereinafter “*Trading Techs. I*”). The Federal Circuit has concluded that such claims are directed to an abstract idea. *Id.* Cf. *Core Wireless Licensing S.A.R.L. v. LG Elecs., Inc.*, 880 F.3d 1356, 1362–63 (Fed. Cir. 2018) (The court determined that “[t]he asserted claims in this case are directed to an improved user interface for computing devices,” that the claim “limitations disclose a specific manner of displaying a limited set of information to the user, rather than using conventional user interface methods,” and that “[t]he disclosed invention improves the efficiency of using the electronic device.” The court determined that the claims were not directed to an abstract idea.).

“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 Am., Inc.*, 898 F.3d at 1168. Moreover, the “character of [the] information simply invokes a separate category of abstract ideas.” *Id.*

In view of the above, we determine that claim 1 is directed to planning a travel itinerary. In other words, we determine that claim 1 is directed to managing personal behavior or relationships or interactions between people, including social activities, and, thus, an abstract idea, characterized as being directed to certain methods of organizing human activity. (*See* 2019 Guidance at 52.) This is in accord with the Examiner’s determination. (*See* Final Action 11.)

Moreover, we do not see how the recitation of a generic computer readable storage medium, a generic processor, a generic GPS receiver, and generic graphical user interfaces, even in conjunction with the recited functions, “ensure[s] ‘that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].’” *See Alice*, 573 U.S. at 221 (second and third brackets in original) (quoting *Mayo*, 566 U.S. at 77.)

Nor do we find any indication in the Specification that the claimed invention effects a transformation or reduction of a particular article to a different state or thing. Nor do we find anything of record that attributes an improvement in computer technology or functionality to the claimed invention or that otherwise indicates that the claimed invention “appl[ies], rel[ies] on, or use[s] 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.” (*See* 2019 Guidance at 54–55.)

Thus, under prong one of the two prong test in the 2019 Guidance, claim 1 recites an abstract idea; and, under prong two, additional elements in claim 1 do not “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.” (See 2019 Guidance at 54.) As such, under step one of the *Alice* framework, the claims are directed to an abstract idea, and we move to step two.

Step two of the *Alice* framework has been described “as a search for an ‘inventive concept’ –*i.e.*, an element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.’” *Alice*, 573 U.S. at 217–18 (brackets in original) (quoting *Mayo*, 566 U.S. at 72–73). Under step two, we examine, *inter alia*, whether a claim element or combination of elements “[a]dds a specific limitation or combination of limitations that are not well-understood, routine, conventional activity in the field, which is indicative that an inventive concept may be present.” (2019 Guidance at 56.)

Appellant argues that “the ‘weather detour graphical user interface screen’ of claims 1, 35, and 41 is . . . unconventional” and that “the Office Action . . . fails to even show that the claimed ‘tour intensity level’ is disclosed in a piece of prior art . . . , and certainly does not provide any evidence that it is ‘well understood, routine, and conventional.’” (Appeal Br. 30.)

As an initial matter, we note that “[i]t has been clear since *Alice* that a claimed invention’s use of the ineligible concept to which it is directed cannot supply the inventive concept that renders the invention ‘significantly more’ than that ineligible concept.” *BSG Tech LLC v. BuySeasons, Inc.*, 899 F.3d 1281, 1290 (Fed. Cir. 2018). The claimed invention is, at most, an improvement to the performance of the abstract idea, in this case, an

improvement in planning a travel itinerary, i.e., certain methods of organizing human activity. (*See supra*; *see also* 2019 Guidance at 52.)

In our analysis under step two of the *Alice* framework, we examine “[t]he question of whether a claim element or combination of elements is well-understood, routine and conventional to a skilled artisan in the relevant field [which] is a question of fact.” *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1368 (Fed. Cir. 2018). Here, the question is whether the steps of storing information, providing access to the information, providing additional information, providing additional access to information, analyzing information (reforming the sequence of tour sites), and receiving information (communicating with a GPS receiver) are well-understood, routine and conventional.

Taking the claim elements separately, the functions performed in claim 1 by the generic computer readable storage medium, processor, GPS receiver, and graphical user interfaces are purely routine and conventional. (*See, e.g.*, Spec. 23–24, 49, 75–77.) Storing information, providing/presenting information, analyzing information, and receiving information are all routine and conventional functions for a computer processor and were previously known to the industry. *See Elec. Power Grp.*, 830 F.3d at 1356 (The claims “do not include any requirement for performing the claimed functions of gathering, analyzing, and displaying in real time by use of anything but entirely conventional, generic technology. The claims therefore do not state an arguably inventive concept”); *see also In re Katz Interactive Call Processing Patent Litig.*, 639 F.3d 1303, 1316 (Fed. Cir. 2011) (“Absent a possible narrower construction of the terms

‘processing,’ ‘receiving,’ and ‘storing,’ . . . those functions can be achieved by any general purpose computer without special programming.’”).

Considered as an ordered combination, the generic computer components of Appellant’s claimed invention add nothing that is not already present when the limitations are considered separately. For example, claim 1 does not, as discussed above, purport to improve the functioning of the computer components themselves. Nor does it effect an improvement in any other technology or technical field. Instead, claim 1 amounts to nothing significantly more than an instruction to apply the abstract idea using generic computer components performing routine computer functions. (See Final Action 4.) That is not enough to transform an abstract idea into a patent-eligible invention. See *Alice*, 573 U.S. at 225–26.

Regardless, Appellant also argues that

just as in [*Trading Techs. Int’l, Inc. v. CQG, Inc.*, 675 F. App’x 1001 (Fed. Cir. 2017)], it is respectfully submitted that all of the “additional elements” found in the structure of the claimed “*planning graphical user interface screen*,” and “*weather detour graphical user interface screen*,” including at least the claimed indoor-outdoor rating, when considered as an ordered combination at step-two of the *Mayo/Alice* analysis, similarly constitute an inventive concept, and would not preempt all uses of the asserted “abstract idea of collecting, analyzing, displaying, and manipulating travel itinerary data.”

(Appeal Br. 32–33.)

For the reasons already discussed, we do not find persuasive Appellant’s argument regarding the asserted additional elements, e.g., the indoor-outdoor rating information. See, e.g., *SAP Am., Inc.*, 898 F.3d at 1167. Nor do we find Appellant’s preemption argument persuasive. “Where a patent’s claims are deemed only to disclose patent ineligible

subject matter under the *Mayo* framework, as they are in this case, preemption concerns are fully addressed and made moot.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015). In other words, “preemption may signal patent ineligible subject matter, [but] the absence of complete preemption does not demonstrate patent eligibility.” *Id.*

In view of the above, we are not persuaded that the Examiner erred in rejecting claim 1. Independent claims 35 and 41, which recite similar subject matter, are not separately argued. Dependent claims 17, 21, 36, 40, and 42 are also not separately argued. Claims 17, 21, 35, 36, and 40–42 fall with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Appellant presents separate arguments for dependent claims 2 and 37; 4; 5, 6, and 10; 7; 8; 9; 11, 13, and 38; 12; 14; 15; 16; 19; 20; and 39. (Appeal Br. 33–40.) All of these arguments rely on the claims “further defin[ing] the inventive programming of [the associated parent claim(s)].” (*Id.*) However, these dependent claims, like claim 1 discussed above, do not recite “a particular way of programming or designing the software . . . , but instead, merely claim the resulting [method].” *Apple, Inc.*, 842 F.3d at 1241. In other words, these dependent claims do not recite inventive programming, but simply desired results. This is fatal to Appellant’s arguments. Like claim 1, these dependent claims are “focused on providing information to [the user] . . . , not on improving computers or technology.” *See Trading Techs. II*, 921 F.3d at 1384. Therefore, for the reasons discussed above, we are not persuaded that the Examiner erred in rejecting dependent claims 2, 4–16, 19, 20, and 37–39.

The § 103(a) rejections

Claim 1 recites, in relevant part,

storing . . . a respective indoor-outdoor rating for each said tour site created by assessing each of said tour sites, each said indoor-outdoor rating comprising a majority percentage of said respective tour site comprising indoor site features or a majority percentage of said respective tour site comprising outdoor site features.

The Examiner finds that “both Whitsett and Shuchman teach an indoor-outdoor rating that indicates that a ‘majority percentage’ of the site is either indoors or outdoors.” (Answer 28–29 (citing Whitsett ¶¶ 64, 65, 67, 68, 143 and Shuchman col. 3, ll. 58–67, col. 5, ll. 20–26, 42–44, col. 11, 22–24, col. 12, ll. 50–54, claim 15); *see also* Final Action 18–19, 21–22.)

Specifically, the Examiner determines that the

claim language does not prevent interpretation that the rating of either being ‘indoors’ or ‘outdoors’ is a binary rating percentage (e.g. if a site is recognized as being mostly indoors its binary representation is indoors, i.e. 100% indoors, 0% outdoors; if a site is recognized as being mostly outdoors its binary representation is outdoors, i.e. 0% indoors, 100% outdoors). Both 0% and 100% are binary percentages, and the Appellant’s claim language does not require that the percentage must include values between 0% and 100%. Therefore, both Whitsett and Shuchman teach a respective indoor-outdoor rating

(Answer 29.)

Appellant argues that “[t]he Office Action supplies an interpretation . . . that improperly reads limitations out of the Applicant’s claims, and/or conversely reads teachings into the cited reference (Shuchman) that do not exist therein.” (Appeal Br. 47.)

“[I]n proceedings before the PTO, claims in an application are to be given their broadest reasonable interpretation consistent with the

specification, and that claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art.” *In re Sneed*, 710 F.2d 1544, 1548 (Fed. Cir. 1983) (internal citation omitted).

Here, claim 1 recites “storing . . . a respective indoor-outdoor rating for each tour site.” Claim 1 further recites “each said indoor-outdoor rating comprising a majority percentage of said respective tour site comprising indoor site features or a majority percentage of said respective tour site comprising outdoor features.” In other words, a rating is stored for each site, and each rating includes a majority percentage designating the site as either indoor or outdoor. Because the rating for each site depends on a majority percentage, there can only be one majority percentage rating for each site. Thus, for any given site, there will be a single majority percentage designation and that designation will be either indoor or outdoor.² This interpretation is in accord with the disclosure in the Specification. (*See, e.g.*, Spec. Tables 1 & 2.)

The portions of Shuchman relied on by the Examiner or cited by Appellant teach that “[d]uring itinerary management mode, the user may decide to change plans.” (Shuchman, col. 3, ll. 58–59.) “The user may select general traits he would prefer POI’s [(points of interest)] in his itinerary to

² This is not to suggest that other ratings related to indoor or outdoor features of a site, i.e., non-majority percentage based ratings, cannot be stored. However, claim 1 uses the majority percentage based ratings in the claim step of reforming the itinerary, i.e., “by replacing said sites having said majority percentage of outdoor site features for its indoor-outdoor rating, with other tour sites having a highest said majority percentage of indoor site features for its indoor-outdoor rating.” In claim 1, each site must have one indoor-outdoor rating comprising a majority percentage designating the site as indoor or outdoor.

have. For example: user may specify that he would prefer indoor POI's over outdoor POI's" (*id.* at col. 6, ll. 51–54), that “non-limiting, evaluation heuristics are as follows: . . . preferred weather conditions—do the weather conditions match the selected POI's? (nice weather on the day out)” (*id.* at col. 11, ll. 13–22), and that “if the user prefers outdoor POI's over indoor POI's, an outdoor POI, such as a park will receive a higher score than in indoor POI such as a museum” (*id.* at col. 9, ll. 37–41).

Thus, Shuchman teaches accepting as input a user's preference about visiting outdoor or indoor sites. However, it is unclear what information Shuchman stores about a site. For example, does Shuchman store information designating a site as both indoor and outdoor, i.e., in Shuchman, can a site such as a castle with an outdoor garden, be designated as both indoor and outdoor? If so, it is unclear how to select one of those designations as being associated with a majority percentage. It is also unclear if all sites in Shuchman must be designated as indoor or outdoor. May some sites not be designated as either? In short, it is unclear from the cited portions of Shuchman if Shuchman stores a respective indoor-outdoor rating for each tour site where that rating comprises a majority percentage designation of either indoor or outdoor. We find the same shortcoming in the cited portions of Whitsett. Nor does the Examiner determine that it would have been obvious to modify one or more references to store “a respective indoor-outdoor rating for each said tour site created by assessing each of said tour sites, each said indoor-outdoor rating comprising a majority percentage of said respective tour site comprising indoor site features or a majority percentage of said respective tour site comprising outdoor site features,” as recited in claim 1.

Therefore, we will reverse the rejection of claim 1. Independent claims 35 and 41 contain similar language and, for the reasons discussed, we will also reverse the rejection of claims 35 and 41. The additional references relied on by the Examiner in rejecting dependent claims 2, 4–17, 19–21, 36–40, and 42 do not cure this deficiency. Therefore, we will also reverse the rejections of claims 2, 4–17, 19–21, 36–40, and 42.

CONCLUSION

The Examiner’s rejection of claims 1, 2, 4–17, 19–21, and 35–42 under 35 U.S.C. § 112(a) is reversed.

The Examiner’s rejection of claims 1, 2, 4–17, 19–21, and 35–42 under 35 U.S.C. § 101 is affirmed.

The Examiner’s rejections of claims 1, 2, 4–17, 19–21, and 35–42 under 35 U.S.C. § 103(a) are reversed.

Specifically:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1, 2, 4–17, 19–21, 35–42	112(a)	written description		1, 2, 4–17, 19–21, 35–42
1, 2, 4–17, 19–21, 35–42	101	eligibility	1, 2, 4–17, 19–21, 35–42	
1, 2, 4, 5, 7–13, 17, 19–21	103(a)	Whitsett, Shuchman, Ben-Yehuda, Purang		1, 2, 4, 5, 7–13, 17, 19–21
6	103(a)	Whitsett, Ben-Yehuda, Shuchman, Purang, Aycock		6
14	103(a)	Whitsett, Ben-Yehuda,		14

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
		Shuchman, Purang, Heideman		
15	103(a)	Whitsett, Ben-Yehuda, Shuchman, Purang, Randall, Jonsson		15
16	103(a)	Whitsett, Ben-Yehuda, Shuchman, Purang, Chavez, Kent		16
35, 37–39, 41	103(a)	Whitsett, Ben-Yehuda, Shuchman		35, 37–39, 41
36, 42	103(a)	Whitsett, Shuchman, Ben-Yehuda, Purang		36, 42
40	103(a)	Whitsett, Shuchman, Ben-Yehuda, Aycock		40
Overall Outcome			1, 2, 4–17, 19–21, 35–42	

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