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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* DARA SARIASLANI and JOEL P. DUNSMORE

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Appeal 2019-000220  
Application 13/362,639  
Technology Center 2800

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Before DONNA M. PRAISS, DEBRA L. DENNETT, and LILAN REN,  
*Administrative Patent Judges.*

DENNETT, *Administrative Patent Judge.*

DECISION ON APPEAL<sup>1</sup>

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>2</sup> appeals from the Examiner's decision to reject claims 1–14 of Application 13/362,639. We have jurisdiction under 35 U.S.C. § 6(b).

For the reasons set forth below, we AFFIRM IN PART.

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<sup>1</sup> In our Decision, we refer to the Specification (“Spec.”) of Application 13/362,639 (“the ’639 App.”) filed Jan. 31, 2012; the Final Office Action dated Dec. 8, 2017 (“Final Act.”); the Advisory Action dated Feb. 23, 2018 (“Adv. Act.”); the Appeal Brief filed June 4, 2018 (“Appeal Br.”); the Examiner’s Answer dated Aug. 9, 2018 (“Ans.”); and the Reply Brief filed Oct. 4, 2018 (“Reply Br.”).

<sup>2</sup> We use the word “Appellant” to refer to “Applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies Keysight Technologies, Inc. as the real party in interest. Appeal Br. 2.

## STATEMENT OF THE CASE

The '639 Application relates to residual phase noise of a device under test (DUT). Spec. ¶ 1. The Specification describes, *inter alia*, a system for measuring residual phase noise of a DUT including at least one signal source configured to generate a stimulus signal to be input to the DUT and to generate a reference signal is phase coherent with the stimulus signal. *Id.* ¶¶ 24–28, 31–34, and 37–49. A first receiver is configured to receive and measure an output signal from the DUT responsive to the stimulus signal. *Id.* A second receiver is configured to receive and measure the reference signal and to output a measurement of the reference signal. *Id.* A computer processor is configured to receive the measurement of the output signal from the first receiver and the measurement of the reference signal, and computationally suppresses a carrier of the output signal based on the computed difference, thereby providing the residual phase noise of the DUT. *Id.*

Claim 1 is representative of the '639 Application's claims and is reproduced below from the Claims Appendix of the Appeal Brief.

1. A system for measuring residual phase noise of a device under test (DUT), the system comprising:

at least one signal source configured to generate a stimulus signal to be input to the DUT and to generate a reference signal that is phase coherent with the stimulus signal;

a first receiver configured to receive and measure an output signal from the DUT that is responsive to the stimulus signal and to output a measurement of the output signal;

a second receiver configured to receive and measure the reference signal from a signal source of the at least one signal source and to output a measurement of the reference signal; and

a computer processor configured to receive the measurement of the output signal from the first receiver and the

measurement of the reference signal from the second receiver, to compute a difference between the measurement of the output signal and the measurement of the reference signal so as to computationally suppress a carrier of the output signal based on the computed difference, thereby providing the residual phase noise of the DUT.

Appeal Br. 25 (Claims App.).

Independent claim 8 recites a method for measuring residual phase noise of a DUT. *Id.* at 26–27.

### REFERENCES

The Examiner relies on the following prior art in rejecting the claims on appeal:

Meyers	US 5,412,325	May 2, 1995
Buckley	US 6,480,006 B1	Nov. 12, 2002
Yamaguchi et al. ("Yamaguchi")	US 2005/0031029 A1	Feb. 10, 2005

### REJECTIONS

On appeal, the Examiner maintains the following rejections of the claims<sup>3</sup>:

1. Claims 8–14 as unpatentable under 35 U.S.C. § 101 due to being directed to a judicial exception. Final Act. 2–3.
2. Claims 8–14 as unpatentable under 35 U.S.C. § 103(a) over Buckley in view of Meyers. Final Act. 3–7.

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<sup>3</sup> Because this application was filed before the March 16, 2013, effective date of the America Invents Act, we refer to the pre-AIA version of the statute.

3. Claims 1–7 as unpatentable under 35 U.S.C. § 103(a) over Buckley in view of Meyers, and further in view of Yamaguchi. Final Act. 7–10.

## DISCUSSION

We review the appealed rejections for error based upon the issues Appellant identifies, and in light of the arguments and evidence produced thereon. *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential) *cited with approval in In re Jung*, 637 F.3d 1356, 1365 (Fed. Cir. 2011) (“[I]t has long been the Board’s practice to require an applicant to identify the alleged error in the examiner’s rejections.”)). After considering the argued claims in light of the case law presented in this Appeal and each of Appellant’s arguments, we are not persuaded of reversible error in the Examiner’s rejection of claims 8–14 as being directed to unpatentable subject matter, however, we are persuaded that the Examiner reversibly erred in rejecting claims 1–14 over the cited prior art references.

### *Rejection 1 of Claims 8–14 under § 101*

The Examiner rejects claims 8–14 under 35 U.S.C. § 101 as directed to patent ineligible subject matter. *See* Final Act. 2–3; Ans. 2–4. An invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. The Supreme Court, however, 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 excepted category, we are guided by the Supreme Court’s two-step framework, described in *Alice* (*see*

*id.* at 217–18), and *Mayo Collaborative Services v. Prometheus Laboratories, 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 (*id.* at 219–20; *Bilski v. Kappos*, 561 U.S. 593, 611 (2010)); mathematical formulas (*Parker v. Flook*, 437 U.S. 584, 594–95 (1978)); and mental processes (*Gottschalk v. Benson*, 409 U.S. 63, 69 (1972)). Concepts determined to be patent eligible include physical and chemical processes, such as “molding rubber products” (*Diamond v. Diehr*, 450 U.S. 175, 191 (1981)); “tanning, dyeing, making water-proof cloth, vulcanizing India rubber, smelting ores” (*id.* at 182 n.7 (quoting *Corning v. Burden*, 56 U.S. 252, 267–68 (1854))); and manufacturing flour (*Benson*, 409 U.S. at 69 (citing *Cochrane v. Deener*, 94 U.S. 780, 785 (1876))).

If a 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. “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).

In January 2019, the PTO published revised guidance on the application of Section 101. USPTO, *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Guidance”). Under the Guidance, we first look to whether a 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) (“Guidance Step 2A, Prong One”), and (2) additional elements that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h)) (“Guidance Step 2A, Prong Two”). 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 (“Guidance Step 2B”).

*Judicial Exception — Guidance Step 2A, Prong One*

The Appellant argues the claims under this rejection as a group. *See generally* Appeal Br. 4–13. Accordingly, we focus our discussion on independent claim 8, which we select as representative of the group. 37 C.F.R. § 41.37(c)(1)(iv).

As indicated above, under Guidance Step 2A, Prong One, we consider whether claim 8 recites a judicial exception to the statutory categories of patent-eligible subject matter, including one of the following groupings of abstract ideas: (1) mathematical concepts, e.g., mathematical relationships, mathematical formulas or equations, and mathematical calculations; (2) mental processes, e.g., concepts performed in the human mind, including observations, evaluations, judgments, and opinions; and (3) certain methods of organizing human activity. *See* Guidance, 84 Fed. Reg. at 52.

The Examiner finds claim 8 to be directed to measuring residual phase noise of a device under test (DUT), the DUT providing an output signal responsive to a stimulus signal, comprising: receiving measurements of the output signal from a first receiver and measurements of a reference signal from a second receiver; mathematically determining a difference between the output signal and the reference signal based on the received measurements of the output signal and the reference signal; and determining the residual phase noise of the DUT based on the difference between the output signal and the reference signal. Ans. 2. The Examiner thus finds claim 8 to be directed to the abstract idea of mathematical relationships. Ans. 2–4.

Claim 8 recites the following limitations: (1) “receiving and measuring at a first receiver;” (2) receiving and measuring at a second receiver;” (3) “receiving measurements . . . from the first receiver and . . . from the second receiver at a processor;” (4) “computing at the processor a difference between the received measurements;” and (5) “determining the residual phase noise of the DUT based on the computed difference.” Appeal Br. 26–27 (Claims App.). The limitations that recite “receiving” also recite “measuring.” *Id.* Differences between received measurements are computed (calculated) by a processor, and the difference is determined to be the residual phase noise of a DUT. *See id.*

“Information as such is an intangible.” *Electric Power Group, LLC v. Alstom, S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016). Our reviewing court treats collecting information, including when limited to a particular content, as within the realm of abstract ideas. *See id.* (citing *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1349 (Fed. Cir. 2015); *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015);

*Extraction & Transmission LLC v. Wells Fargo Bank, Nat'l Ass'n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014); *Digitech Image Techs., LLC v. Elecs. for Imaging, Inc.*, 758 F.3d 1344, 1351 (Fed. Cir. 2014); *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1370 (Fed. Cir. 2011)). Merely presenting the results of abstract processes of collecting and analyzing information, without more (such as identifying a particular tool for presentation), is abstract as an ancillary part of such collection and analysis. *See, e.g., Content Extraction*, 776 F.3d at 1347; *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014).

The Supreme Court has established that a mathematical concept without more does not constitute patent-eligible subject matter. *See Parker v. Flook*, 437 U.S. 584, 587–96 (1978) (“Here it is absolutely clear that respondent’s application contains no claim of patentable invention. . . . Respondent’s application simply provides a new and presumably better method for calculating alarm limit values.”); *Mackay Radio & Tel. Co. v. Radio Corp. of Am.*, 306 U.S. 86, 94 (1939) (“[A] scientific truth, or the mathematical expression of it, is not patentable invention . . .”).

Claim 8 recites the mathematical concept of determining a difference by mathematical calculations. Accordingly, we conclude that claim 8 recites a mathematical concept, which is an abstract idea. *See Digitech*, 758 F.3d at 1350 (method claims an abstract idea where it describes a process of organizing information through mathematical correlations not tied to a specific structure or machine).

*Integration into a Practical Application — Guidance Step 2A, Prong Two*

Having determined that claim 8 recites the abstract idea of a mathematical relationship, we next look to determine whether the claim

recites “additional elements that integrate the judicial exception into a practical application.” Guidance, 84 Fed. Reg. at 53–54. According to the Guidance, even if a claim recites any one of three groupings of abstract ideas, the claim is still not “directed to” a judicial exception (abstract idea), and thus is patent eligible, if “the claim as a whole integrates the recited judicial exception into a practical application of that exception.” Guidance, 84 Fed. Reg. at 53. Limitations that are indicative of “integration into a practical application” include: (1) improvements to the functioning of a computer, or to any other technology or technical field (*see* MPEP § 2106.05(a)); (2) applying the judicial exception with, or by use of, a particular machine (*see id.* § 2106.05(b)); (3) effecting a transformation or reduction of a particular article to a different state or thing (*see id.* § 2106.05(c)); and (4) applying or using the judicial exception in some other meaningful way beyond generally linking the use of the judicial exception to a particular technological environment, such that the claim as a whole is more than a drafting effort designed to monopolize the exception (*see id.* § 2106.05(e)). *See* Guidance, 84 Fed. Reg. at 54–55 (“Prong Two”). In contrast, limitations that are not indicative of “integration into a practical application” include: (1) adding the words “apply it” (or an equivalent) with the judicial exception, merely including instructions to implement an abstract idea on a computer, or merely using a computer as a tool to perform an abstract idea (*see* MPEP § 2106.05(f)); (2) adding insignificant extra-solution activity to the judicial exception (*see id.* § 2106.05(g)); and (3) generally linking the use of the judicial exception to a particular technological environment or field of use (*see id.* § 2106.05(h)). *See* Guidance, 84 Fed. Reg. at 54–55 (“Prong Two”).

Appellant argues that claim 8 recites “actual signal measurements are performed, and an actual trait of the DUT—residual phase noise—is determined,” making the process not merely an abstract idea, “but rather a practical way of determining a physical trait of the DUT.” Appeal Br. 7. This argument is not persuasive because claim 8 merely uses a processor to perform the abstract idea of calculating differences between measurements, thus the abstract idea is not integrated into a practical application. *See* Guidance, 84 Fed. Reg. at 53.

Appellant contends that claim 8 does not merely automate a process that can otherwise be done by hand and does not simply implement an abstract idea using a computer. *Id.* at 7–8. Appellant argues that claim 8 actually improves a test system’s methodology, and does not merely collect, analyze, and display electronic information. *Id.* at 8. However, Appellant proffers no evidence, points to nothing in the claim or Specification, to support these arguments. And we find nothing to support Appellant’s contentions.

To the contrary, claim 8 recites receiving and measuring signals and calculating a difference between them. Appeal Br. 26–27 (Claims App.). No improvement is recited, explained, or supported. Data is collected, analyzed, and displayed—without more—despite Appellant’s assertion otherwise. Appellant’s argument that “actual signal measurements are performed” (Appeal Br. 7) is insufficient to indicate an integration of the abstract idea into a practical application. Appellant offers no explanation of how or why electronic signal measurements improve functioning of anything, apply to a particular machine (other than a generic “processor”), change an article to a different state or thing, or link an abstract idea to a particular technological environment. *See id.* at 7–8.

We determine that claim 8 as a whole does not integrate the judicial exception—a mathematical concept—into a practical application of that exception. Merely linking the use of the abstract idea to a particular field of use—calculating residual phase noise in this case—does not indicate integration of the abstract idea into a practical application.

*Inventive Concept — Guidance Step 2B*

Under Guidance Step 2B, we determine whether the claim provides an “inventive concept,” i.e., whether the additional elements beyond the judicial exception, individually and in combination, amount to “significantly more” than the judicial exception itself. Guidance, 84 Fed. Reg. at 56. “[S]imply append[ing] well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality,” indicates absence of an inventive concept. *Id.*

Appellant argues that “various elements in the claims are sufficient to ensure that the claims amount to significantly more than the abstract idea itself, particularly in that the claim as a whole is for a particular application of an asserted abstract idea, and involves a novel ordered process.” Appeal Br. 9. Appellant contends that the claims do not involve mere data gathering, and do not simply equate to mathematical relationships such as an algorithm, or simply reduce the amount of calculations in known and established computations. *Id.*

Appellant argues that even if some or all of the steps/elements of claim 8 are well-known components, “the ordered combination of applying these steps and/or using these components is not.” *Id.* at 11.

Appellant contends, “[t]he claims . . . improve an existing technological process, i.e., improvements to electronic circuitry testing, and

more particularly improvements in efficiency with regard to testing devices under test (DUTs), and identifying and/or accounting for residual phase noise added to an input stimulus signal by the DUTs.” *Id.* Appellant argues that such improvements to another technology field transform an abstract idea into a patent-eligible application. *Id.* (citing *Alice* generally).

Appellant argues that the combination of steps recited in claim 8 applies the computed difference of two measurements to improve the technological process of “measuring residual phase noise of a device under test (DUT)” using a dedicated processor. *Id.* at 12. Appellant contends that the improvements recited in claim 8 quantify the residual phase noise of a DUT by calculating the difference between the output signal of the DUT and a reference signal phase coherent with the output signal of the DUT, such that there is no need for physically mixing the output signal of the DUT with another signal, thereby eliminating the need for various signal processing components. *Id.* Such improvements, Appellant argues, amount to “significantly more” than the assertedly abstract idea itself. *Id.*

We agree with the Examiner that claim 8 simply recites a receiving of data and a determination, which is no more than an algorithm. *See* Ans. 5. As such, the claims do not improve a technological process, and simply improve a calculation or determination, which is still abstract. *See id.* The Examiner notes that, unlike the case in *Diehr*, claim 8 only recites “determining the residual phase noise,” but recites no step utilizing this determination. *Id.*

In response, Appellant argues that it is the Examiner’s burden to show that the claim element or combination of elements of the claims are well-understood, routine and conventional to a skilled artisan in the relevant field. Reply Br. 5.

Appellant’s argument is not persuasive. In addressing step 2B, we consider only the elements *additional* to the abstract idea. *BSG Tech LLC v. BuySeasons, Inc.*, 899 F.3d 1281, 1290 (Fed. Cir. 2018) (“It 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.”). We need not account for any claim limitation for the purposes of determining whether it is “well-understood, routine, conventional,” as all limitations in claim 8 are swallowed by the abstract idea; an inventive concept does not arise in the claim limitations taken individually, as they recite use of generic, well-known components performing well-known, routine, and conventional activities of data collection and manipulation.

An inventive concept “cannot simply be an instruction to implement or apply the abstract idea on a computer.” *Bascom Global Internet Svcs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1349 (Fed. Cir. 2016) (citing *Alice*, 134 S. Ct. at 2355). Unlike *Bascom*, the ordered combination of claim elements fails to show an inventive concept because claim 8 is not limited to a specific technical solution of the abstract idea of collecting and manipulating data. Without explanation, Appellant contends that the claims “improve methodology of a test system.” Appeal Br. 8. However, to the extent that the applicant identifies “drawbacks” in “conventional” residual phase noise measurement techniques (*see* Spec. ¶¶ 5–7), the ordered combination in claim 8 does not address overcoming such drawbacks. Accordingly, we determine that an inventive concept does not arise from claim 8’s ordered combination of elements.

In conclusion, for the reasons stated above and in the Final Office Action and Answer, we sustain the rejection of claims 8–14 under 35 U.S.C. § 101.

*Rejection 2 of Claims 8–14 under § 103 over Buckley in view of Meyers*

Appellant argues the prior art rejection of claims 8–14 as a group. *See* Appeal Br. 13–21. We select independent claim 8 as representative of the group. 37 C.F.R. § 41.37(c)(1)(iv).

The Examiner finds that Buckley teaches the limitations of claim 8, except that Buckley does not explicitly carry out the method of determining residual phase noise using computer code at a processor. Final Act. 4. The Examiner finds that Meyers teaches a method of mathematically determining phase noise using computer code. *Id.* at 5. The Examiner concludes that it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified Buckley to include the processor and processing capabilities of Meyers in order to lower the cost of the measurement system and reduce hardware to result in a lighter, smaller, and more reliable system. *Id.* (citing Meyers 2:57–68; 3:54–68).

Figure 1 of Buckley is reproduced below:

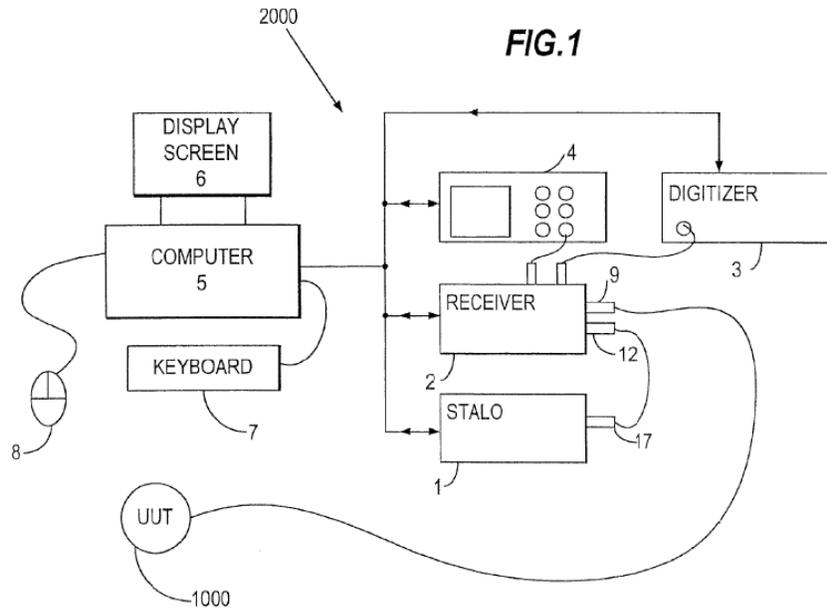


Figure 1 shows a preferred embodiment of a phase noise measurement system in accordance with Buckley's invention. Buckley, 7:7–8. A Unit Under Test (UUT) (1000) is coupled to a phase noise measurement system (2000) which includes a stable local oscillator synthesizer (STALO) (1), a receiver/downconverter (2), a digitizer (3), a spectrum analyzer (4), and a computer (5) including a display screen (6), keyboard (7), and mouse (8). *Id.* at 7:24–29.

Appellant argues that Buckley discloses only a single receiver having two inputs, input 9 for inputting the output from the UUT 1000, and input 12 for inputting the output of the STALO 1. Appeal Br. 16; Reply Br. 8.

In response to Appellant's argument that Buckley discloses a single receiver, but not a first and a second receiver, the Examiner finds that a "receiver" is defined as "a device for converting signals (such as electromagnetic waves) into audio or visual form." Ans. 6. The Examiner finds that the two inputs in Buckley (9 and 12) fit this definition of receiver. *Id.* In addition, the Examiner finds that Meyers teaches the use of multiple waveform recorders to convert signals into visual form and, therefore, are

receivers as claimed. *Id.* The Examiner finds that “a waveform recorder is a form of spectrum analysis,” thus the waveform recorders read on the claimed receivers. *Id.* at 7.

Appellant argues that the inputs of Buckley do not “convert” a signal to audio or visual form or convert a signal from a modulated wave. Reply Br. 9. Appellant argues also that Buckley’s inputs do not receive and measure the output signal or reference signal. Appeal Br. 18 (citing Spec. ¶¶ 25, 32). Therefore, Appellant contends, Buckley’s two inputs do not read on the claimed two receivers. *Id.* at 18–19.

With regard to Meyers, Appellant argues that waveform recorders do not receive and measure an output signal from a DUT or a reference signal generated by a signal source. Reply Br. 19. Appellant contends that waveform recorders do not convert signals to visual form and are not spectrum analyzers. *Id.* (citing Meyers, 3:58–62).

Appellant’s argument is persuasive that the Examiner reversibly errs in finding that either Buckley or Meyers teaches the receivers as claimed. Therefore, we do not sustain the rejection of claim 8 as obvious over Buckley in view of Meyers. Accordingly, we do not sustain the rejection of claims 9–14, which depend from claim 8, as obvious over the combined references for the same reasons as for claim 8.

*Rejection 3 of Claims 1–7 under § 103 over Buckley in view of Meyers and further in view of Yamaguchi*

Appellant argues that claims 1–7 are patentable over Buckley in view of Meyers and further in view of Yamaguchi for the reasons articulated with respect to claim 8. Appeal Br. 21. Appellant does not argue the claims separately. *Id.* We select claim 1 as representative of the group of claims. 37 C.F.R. § 41.37(c)(1)(iv).

Claim 1 recites a system for measuring residual phase noise of a DUT comprising, *inter alia*, a first and second receiver. Appeal Br. 25 (Claims App.).

As in the rejection of claim 8, the Examiner finds that Buckley teaches a first and second receiver. Final Act. 7. In the Answer, the Examiner refers the reader to the discussion of the rejection of claim 8. Ans. 7–8.

Because we determine *supra* that the Examiner reversibly errs in finding that Buckley (or Meyers) teaches a first and second receiver, we do not sustain the rejection of claim 1—or its dependent claims 2–7) over Buckley in view of Meyers, and further in view of Yamaguchi.

## CONCLUSION

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
8-14	101	Eligibility	8–14	
8–14	103(a)	Buckley, Meyers		8–14
1–7	103(a)	Buckley, Meyers, Yamaguchi		1–7
<b>Overall Outcome</b>			8–14	1–7

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

AFFIRMED IN PART