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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 HEYNING CHENG, ROBERT J. SPOER, ERIK H. JUHL and
ADRIAN AXEL REMIGO FERNANDEZ

———————

Appeal 2019-000241
Application 13/788,937
Technology Center 3600

———————

Before CARL W. WHITEHEAD JR., JAMES B. ARPIN, and
NABEEL U. KHAN, *Administrative Patent Judges.*

KHAN, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant[1] appeals from the

Examiner's decision to reject claims 1, 3, 5–10, 12–16, 18, 20–23, and 25.

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(a). Appellant identifies the real party in interest as Microsoft
Technology Licensing, LLC. Appeal Br. 2.

CLAIMED SUBJECT MATTER

Appellant describes the claimed subject matter as follows:

The present disclosure describes methods, systems, and computer program products, which individually provide functionality for identifying members of a social network as job candidate referral sources.

For example, the systems and methods described herein may receive information associated with an available job, and for a member of a social network that is affiliated with the available job (e.g., is employed by the company providing the available job), identify a connection within the social network that is a suitable candidate referral source by utilizing an algorithmic process that determines the suitability of members connected to the identified connection as candidates for the available job. In addition, these systems and methods may automate some aspects of the process of identifying job candidates in an employee's extended network, by facilitating communication between the employee and the candidate referral source with the goal of identifying suitable candidates.

Spec. ¶¶ 18–19.

Claim 1, reproduced below with annotations, is illustrative:

1. A method comprising:

communicating a user-selectable link to be displayed on a display, the user-selectable link configured to initiate a search for a candidate referral source selected from one or more member profiles of a social network service; receiving, by at least one hardware processor, a selection of the user-selectable link to initiate the search;

receiving information associated with an available job opportunity associated with a first member of a social network service;

in response to a selection of the user-selectable link:

determining a first plurality of members that are a first-degree connection of the first member within the

social network service, each member of the first plurality of members having a corresponding member profile;

for each member selected from the first plurality of members that is a first-degree connection of the first member:

determining a second plurality of members, where each member of the second plurality of members is a connection with at least one member selected from the first plurality of members and not a connection with the first member, and each member of the second plurality of members has a corresponding member profile;

for each member of the second plurality of members, calculating a suitability score calculated according to a comparison of one or more attributes of the corresponding member profile of the member selected from the second plurality of members with one or more requirements defined by the available job opportunity;

comparing each suitability score associated with each member of the second plurality of members with a threshold score; and

in response to a determination that a given suitability score is above the threshold score, identifying the corresponding member selected from the first plurality of members as a candidate referral source for the available job opportunity; and

communicating a user-selectable element that includes information associated with at least one candidate referral source, the user-selectable element configured to perform an action associated with the at least one candidate referral source in response to being selected.

REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Savjani	US 2009/0299785 A1	Dec. 3, 2009
Gurion	US 2012/0095931 A1	April 19, 2012

REJECTIONS[2]

1.   Claims 1, 3, 5–10, 12–16, 18, 20–23, and 25 stand rejected under 35 U.S.C. § 101 as directed to a judicial exception to patentable subject matter. Final Act. 7–10.

2.   Claims 1, 3, 5–10, 12–16, 18, 20–23, and 25 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combined teachings of Gurion and Savjani. *Id.* at 10–16.

OPINION

Rejection under 35 U.S.C. § 101

   Legal Principles

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

In determining whether a claim falls within an excluded category, we are guided by the Court's two-part framework, described in *Mayo* and *Alice*. *Alice*, 573 U.S. at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus*

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[2] The Examiner has withdrawn the rejection under 35 U.S.C. § 103. Ans. 8.

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 Court held that "a claim drawn to subject matter otherwise statutory does not become nonstatutory simply because it uses a mathematical formula." *Diehr*, 450 U.S. at 187; *see also id.* at 191 ("We view respondents' claims as nothing more than a process for molding rubber products and not as an attempt to patent a mathematical formula."). Having said that, the Court also indicated that a claim "seeking patent protection for that formula in the abstract . . . is not accorded the protection of our patent laws, and this

principle cannot be circumvented by attempting to limit the use of the formula to a particular technological environment." *Id.* (citing *Benson* and *Flook*); *see, e.g.*, *id.* at 187 ("It is now commonplace that an *application* of a law of nature or mathematical formula to a known structure or process may well be deserving of patent protection.").

If the claim is "directed to" an abstract idea, we turn to the second part of the *Alice* and *Mayo* framework, where "we must examine the elements of the claim to determine whether it contains an 'inventive concept' sufficient to 'transform' the claimed abstract idea into a patent-eligible application." *Alice*, 573 U.S. at 221 (quotation marks omitted). "A claim that recites an abstract idea must include 'additional features' to ensure 'that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].'" *Id.* (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.*

In January 2019, the U.S. Patent and Trademark Office (USPTO) published revised guidance on the application of § 101. 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) ("2019 Revised Guidance").[3] "All USPTO personnel are, as a matter of internal agency management, expected to follow the guidance." *Id.* at 51; *see also* October 2019 Update at 1.

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

Under the 2019 Revised Guidance and the October 2019 Update, we

first look to whether the claim recites:

(1) any judicial exceptions, including certain groupings of
abstract ideas (i.e., mathematical concepts, certain methods of
organizing human activity such as a fundamental economic
practice, or mental processes) ("Prong One of Step 2A"); and

(2) additional elements that integrate the judicial exception into
a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h) (9th
ed. Rev. 08.2017, Jan. 2018)) ("Prong Two of Step 2A").[4]

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

Only if a claim (1) recites a judicial exception and (2) does not

integrate that exception into a practical application, do we then look, under

Step 2B, to whether the claim:

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

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

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

Prong One of Step 2A

Under prong one of step 2A, we first look to whether the claim recites

any judicial exceptions, including certain groupings of abstract ideas (i.e.,

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

mathematical concepts, certain methods of organizing human activities, or mental processes). 2019 Revised Guidance, 84 Fed. Reg. at 52–54.

In this regard, the Examiner finds that the claims include limitations that are similar to a method of organizing human activity in that they entail electronic record keeping and interpersonal activities of user profiles as they relate to a particular job. Final Act. 8. The Examiner also finds that other limitations, such as the comparing and calculating limitations are similar to those that can be performed mentally, with or without the aid of a pen and paper. *Id.*

Appellant argues "the abstract ideas identified by the Examiner are so far removed from the concepts held to be patient ineligible so as to render any inquiry under 35 U.S.C. § 101 effectively meaningless." Appeal Br. 24; *see also* Reply Br. 2 ("Initially the Examiner writes '[t]he focus of the claims is to identify a member as a referral source by the gathering and combining data.' *Examiner's Answer* at 4. However, this summary of the claims is overbroad and generalizes the claims to the extent that deprives the claims of any meaning.").

We start by analyzing the limitations of claim 1 to determine whether any recite an abstract idea. Claim 1 recites "receiving information associated with an available job opportunity associated with a first member of a social network service." According to the Specification, receiving information associated with an available job opportunity associated with a first member of a social network service entails receiving information about a job listing such as the job title, a job description, required or desired skills, education, or experience, name and type of company associated with the job, and location of the job. Spec. ¶ 44. Receiving the type of information

described herein may be performed mentally, for example by reading the job listing information with its job description.

Claim 1 further recites "determining a first plurality of members that are a first-degree connection of the first member within the social network service, each member of the first plurality of members having a corresponding member profile," and "for each member selected from the first plurality of members that is a first-degree connection of the first member," "determining a second plurality of members, where each member of the second plurality of members is a connection with at least one member selected from the first plurality of members and not a connection with the first member, and each member of the second plurality of members has a corresponding member profile." These limitations require determining groups of individuals that are first and second degree connections with the first member, making sure that the second degree connections are not also first degree connections. Such a step may be performed mentally simply by knowing the social connections of a group of people. The member profiles of each individual may be information that can be kept using record keeping tools, such as a ledger.

Claim 1 further recites "for each member of the second plurality of members, calculating a suitability score calculated according to a comparison of one or more attributes of the corresponding member profile of the member selected from the second plurality of members with one or more requirements defined by the available job opportunity," and "comparing each suitability score associated with each member of the second plurality of members with a threshold score." Comparing attributes of a member profile with requirements of a job opportunity is a step that can be performed

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mentally. Under the broadest reasonable interpretation, calculation of a suitability score based on the comparison and comparing the suitability score to a threshold are also steps that can be performed mentally. For instance, the Specification provides an example of the calculations involved in determining the suitability score. Spec. ¶¶ 50–52. These calculations, which involve mathematical operations such as multiplication, addition, and taking a square root, can all be performed mentally.

Claim 1 recites "in response to a determination that a given suitability score is above the threshold score, identifying the corresponding member selected from the first plurality of members as a candidate referral source for the available job opportunity." Once the calculations and comparisons have been made, identifying a member as a candidate referral source can be performed mentally.

Accordingly, we conclude the claims recite at least mental processes, which is a category identified in the 2019 Revised Guidance as constituting an abstract idea. *See* 2019 Revised Guidance, 84 Fed. Reg. at 52. Thus, under prong one of step 2A we determine the claims recite an abstract idea.

Prong Two of Step 2A

Under prong two of step 2A of the Guidance, we determine whether claim 1 includes additional elements that integrate the recited abstract idea into a practical application of the abstract idea. A claim that integrates a judicial exception into a practical application will 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. To evaluate whether the claim integrates the abstract idea into a practical application, we identify whether

there are any additional elements recited beyond the abstract idea, and evaluate those additional elements individually and in combination.

Some exemplary considerations laid out by the U.S. Supreme Court and the U.S. Court of Appeals for the Federal Circuit indicative that additional elements integrate an abstract idea into a practical application include (i) an improvement in the functioning of a computer or to another technological field, (ii) an application of the judicial exception with, or by use of, a particular machine, (iii) a transformation or reduction of a particular article to a different state or thing, or (iv) a use of the judicial exception in some other meaningful way beyond generally linking the use of the judicial exception to a particular technological environment. *See* MPEP § 2106.05(a)–(c), (e)–(h).

Appellant generally argues that its invention recites an improvement to existing processes and methodologies for find suitable candidates for a job opportunity. For example, Appellant argues

> [i]n view of the holding and guidance found in *McRO,* Appellant submits that the pending claims recite patent eligible subject matter that improves upon an existing process. In particular, claim 1 recites an improvement in finding, identifying, and presenting a member from the social network service that has been determined and identified as a suitable candidate referral source. The use of a computer to automate this process and to leverage the connections established in a computerized social network is an improvement not previously realized by existing methods.

Appeal Br. 21–22.

According to Appellant,

> [u]nlike prior methods for finding a suitable candidate for an available employment opportunity, which typically relied on a person (e.g., recruiter) to make a subjective determination about

> whether a person would be a suitable candidate, the claimed subject matter leverages the information stored within a computerized social network to identify potential candidates and, further still, to identify a source (e.g., the candidate referral source) for those potential candidates.

Appeal Br. 22–23; *see also id*. at 23–24

> [l]ike the rules in *McRO,* each of the foregoing features of claim l recite specific characteristics that, when considered as a whole, contribute to improvements in the process of searching for suitable candidates for an employment opportunity, namely, by searching for a candidate referral sources from among member profiles of a social network service, and determining which of those candidate referral sources provide the most suitable candidates for the available employment opportunity.

Taking a look at the claim limitations individually and as an ordered combination, we note that the first limitation of claim 1 recites

> communicating a user-selectable link to be displayed on a display, the user-selectable link configured to initiate a search for a candidate referral source selected from one or more member profiles of a social network service; receiving, by at least one hardware processor, a selection of the user-selectable link to initiate the search.

The user-selectable link, as claimed, is graphical element that can be used to initiate the search for a candidate referral source. The user-selectable link is a typical element of computer applications, such as a web browser. Instead of improving the functioning of such links or of computer applications, such as web browsers, we find the claimed method simply uses such applications and links to implement the abstract idea itself. Thus, we do not find that this claim limitation improves the functioning of a computer or other technical field.

The final limitation of claim 1 recites "communicating a user-selectable element that includes information associated with at least one

candidate referral source, the user-selectable element configured to perform
an action associated with the at least one candidate referral source in
response to being selected." The user-selectable element, like the user-
selectable link, is a typical element of web browsers and computer
applications, and the claimed method does not purport to improve the
functioning of such elements.

In summary, when the claim limitations are analyzed as an ordered
combination, we see that the first limitation recites a user-selectable link to
initiate a search. This link, as we explained does not indicate an
improvement to the functioning of a computer or other technology. All of
the following limitations describe the search for a candidate referral source,
which we have analyzed under prong one. These limitations recite mental
processes and, therefore, do not constitute an improvement to a computer or
other technology. *See 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."); *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d
1138, 1151 (Fed. Cir. 2016) ("[A] claim for a new abstract idea is still an
abstract idea.") (emphasis omitted); *SAP Am., Inc. v. InvestPic, LLC*, 898
F.3d 1161, 1168 (Fed. Cir. 2018) ("What is needed is an inventive concept
in the non-abstract application realm."). Finally, the user-selectable element,
as we explained above, does not indicate an improvement to the functioning
of a computer or other technology.

Appellant's argument that the claimed method signifies an
improvement to processes and methodologies for finding suitable candidates

for a job opportunity is, therefore, unpersuasive. "[A]n improvement in finding, identifying, and presenting a member from the social network service that has been determined and identified as a suitable candidate referral source" (Appeal Br. 21–22) is an improvement to the underlying abstract idea, not an improvement to technology itself. Focusing on select groups of social connections (e.g. second degree connections) and comparing their credentials to the requirements of a job is not a technological improvement nor a solution to a technological problem.

Moreover, we disagree that the claims here are analogous to those in *McRO, Inc. v. Bandai Namco Games Am., Inc., et al.*, 837 F.3d 1299 (Fed. Cir. 2016). In *McRO*, the rules were "rendered in a specific way: as a relationship between sub-sequences of phonemes, timing, and the weight to which each phoneme is expressed visually at a particular timing . . . ." *McRO*, 837 F.3d at 1315. It was the "structure of the limited rules" that were "limited to a specific process for automatically animating characters using particular information and techniques" that led the Federal Circuit to conclude that the claims were "directed to a patentable, technological improvement." *McRO,* 837 F.3d at 1316. Here, Appellant fails to identify any rules recited in the claims that limit the claimed method in any way that improves technology.

Appellant further argues that its claimed method considers "problems that come with managing large data sets, such as member profiles managed by computerized social networks." According to Appellant, "Manipulating and making effective use of large data sets is, *fundamentally,* a computer-centric problem. Without technologies, and methodologies, to make sense out of large data sets, the information managed by computerized social

networks would be so large so as to be effectively meaningless." Appeal Br. 28. The Appellant therefore concludes, "[v]iewed in the context information management, the subject matter recited by claims 1, 16, and 23 is a solution necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computerized social networks." *Id.*

Appellant's argument here is not commensurate with the scope of the claims. Nothing in the claims requires management of large data sets. The claims are broad enough to encompass a small social network consisting of only a handful of members.

Appellant also argues "there is no preemption concern with the claimed subject matter as the independent claims do not attempt to monopolize an abstract idea in of itself." Reply Br. 4; *see also* Appeal Br. 26 ("claim 1 clearly does not preempt all others from determining other scores or from finding candidate referral sources using different types of scores."). This argument, however, is not persuasive. "While preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility." *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015). Moreover, "[w]here 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." *Id.*; *see also OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015), cert. denied, 136 S. Ct. 701 (2015).

Step 2B of the Guidance

Under step 2B of the Guidance, we analyze the claims to determine whether they provide an inventive concept (i.e., whether the additional

elements amount to significantly more than the exception itself). Considerations that are evaluated with respect to step 2B include determining whether the claims as a whole add a specific limitation or combination of limitations that are not well-understood, routine, and conventional activity in the field.

Appellant argues that "one or more of the claimed limitations recite non-conventional activities," but the limitations that Appellant identifies are those that we have found to recite mental processes. *See* Appeal Br. 29. These recited mental processes cannot provide the requisite inventive concept to satisfy Step 2B of the Guidance. The limitations that go beyond the recited mental processes, those of providing a user-selectable link to initiate the search and a user-selectable element to perform an action associated with at least one candidate referral source refer to elements that are well-understood, routine, and conventional. *See, e.g.*, Spec. ¶¶ 61, 64, 66 (discussing selection generally). These elements typically are found in computer applications such as web browsers. The Specification describes the web browsers through which the invention can be accessed as "conventional web browser applications," and the devices that execute these web browsers as "any of a wide variety of mobile devices and operating system." Spec. ¶ 24; *see id.* ¶ 28 (describing social network services generally). This description evidences that the claimed user-selectable links and elements are used in their well-understood, routine, and conventional ways and do not provide an inventive concept that amounts to significantly more than the recited mental processes.

Dependent Claims

With respect to the dependent claims, the Examiner finds:

> the claims are dependent on the above noted rejected claims and
> fail to cure the deficiencies as such are rejected for the same
> rationale. The claims are still directed towards the abstract
> idea(s) previously identified and further limit the abstract idea(s)
> but do not amount to significantly more, even when considered
> as a whole with the respective independent claims.

Final Act. 10.

Appellant argues that the Examiner dismisses the claims with a
conclusory assertion, and does not identify any additional elements of the
dependent claims and explain why they do not add significantly more to the
alleged judicial exception. Appeal Br. 30. Appellant, therefore, argues the
Examiner failed to make a *prima facie* case that the dependent claims are
directed to patent ineligible subject matter. Appeal Br. 30.

We are not persuaded by Appellant's arguments that the Examiner
failed to set forth a *prima facie* case of patent-ineligible subject matter under
35 U.S.C. § 101. Appeal Br. 30. The Examiner is required to provide
Appellant reasonable notice as to the basis of the § 101 rejection pursuant to
35 U.S.C. § 132:

> [T]he PTO carries its procedural burden of establishing a prima
> facie case when its rejection satisfies 35 U.S.C. § 132, in
> "notify[ing] the applicant . . . [by] stating the reasons for [its]
> rejection, or objection or requirement, together with such
> information and references as may be useful in judging of the
> propriety of continuing the prosecution of [the] application." 35
> U.S.C. § 132. That section "is violated when a rejection is so
> uninformative that it prevents the applicant from recognizing and
> seeking to counter the grounds for rejection." *Chester v. Miller,*
> 906 F.2d 1574, 1578 (Fed. Cir. 190).

See In re Jung, 637 F.3d 1356, 1362 (Fed. Cir. 2011).

Here, the Examiner stated the claims are rejected under 35 U.S.C.
§ 101 because the claimed invention is directed to an abstract idea and the

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dependent claims do not amount to significantly more even when considered with their respective independent claims. *See* Final Act. 10. The Examiner also applied the two-part *Alice* test to the independent claims. *Id.* at 7–10. A fair reading of the Examiner's § 101 rejection reflects that the Examiner's analysis with respect to independent claims applies to their respective dependent claims, which are specifically referred to by the Examiner. *See id.* at 10. Moreover, Appellant's mere assertion that the Examiner did not analyze any dependent claims is not persuasive of error. *See In re Jung*, 637 F.3d at 1365; 37 C.F.R. § 41.37(c)(1)(iv)

Conclusion

Accordingly, we sustain the Examiner's rejection of claims 1, 3, 5–10, 12–16, 18, 20–23, and 25 under 35 U.S.C. § 101.

Rejection under 35 U.S.C. § 103(a)

Claim 1 recites "for each member of the second plurality of members, calculating a suitability score calculated according to a comparison of one or more attributes of the corresponding member profile . . . with one or more requirements defined by the available job opportunity." The Examiner relies on Savjani for teaching this limitation. Final Act. 12–13 (citing Savjani ¶¶ 37, 39, 59, 60, 67, 68, 74). Specifically, Examiner relies on Savjani's "rating system for the potential candidate" and "averaging the score to include or not include ratings from other users" as teaching the calculated suitability score. *Id.* at 13 (citing Savjani ¶¶ 59, 60, 67, 68, 74).

Appellant argues

> it is unclear *how* the ratings are determined for the various members; *Savjani* merely provides that user's may assign ratings to each other. In contrast, claim 1 recites a specific manner in

> calculating a suitability score, namely, "according to a comparison of one or more attributes of the corresponding member profile of the member selected from the second plurality of members with one or more requirements defined by the available job opportunity."

Appeal Br. 34; *see also* Reply Br. 7–8 ("*Savjani* merely discloses that a rating is 'the rating given to that user from the user immediately upstream.' There is no reasonable interpretation of the claimed suitability score that would read on the manner in which the rating disclosed in *Savjani* is provided.")

We are persuaded by Appellant's argument. As explained above, the Examiner appears to rely on Savjani's user ratings (as opposed to Savjani's search criteria) as the recited suitability score. Final Act. 13. However, the Examiner does not explain how Savjani's user ratings are "calculated according to a comparison of one or more attributes of the corresponding member profile of the member selected from the second plurality of members with one or more requirements defined by the available job opportunity." Savjani explains that the "system will also provide users the opportunity to rate other users and job postings." Savjani ¶ 59. Savjani describes the rating system as having five levels "from 'poor' to 'hot' for a job posting and from 'poor' to 'top' for a contact or potential job candidate." Savjani ¶ 59. Savjani, however, does not describe how the ratings are calculated other than that they are provided by other users for a particular job posting or for other users.

Accordingly, we do not sustain the Examiner's rejection of independent claims 1, 16, and 23, each of which includes substantially the same limitation and each of which was rejected by the Examiner on the same grounds. For the same reasons, we do not sustain the Examiner's rejection

of claims 3, 5–10, 12–15, 18, 20–22, and 25, each of which depends from one of the aforementioned independent claims.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1, 3, 5–10, 12–16, 18, 20–23, 25	101	Eligibility	1, 3, 5–10, 12–16, 18, 20–23, 25	
1, 3, 5–10, 12–16, 18, 20–23, 25	103	Gurion, Savjani		1, 3, 5–10, 12–16, 18, 20–23, 25
Overall Outcome			1, 3, 5–10, 12–16, 18, 20–23, 25	

TIME PERIOD FOR RESPONSE

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

<u>AFFIRMED</u>