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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DANIEL LEWIS ALEXANDER and
JASON BUCKINGHAM CHEN

Appeal 2019-000558
Application 13/253,957
Technology Center 3600

Before JOSEPH L. DIXON, ROBERT E. NAPPI, and JOHN A. EVANS, Administrative Patent Judges.

EVANS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant[1] seeks our review under 35 U.S.C. § 134(a) of the Examiner's Final Rejection of Claims 1–4, 8–10, 15–23, 25, 28, 29, and 33–42. Appeal Br. 3. Claims 5–7, 11–14, 24, 26, 27, and 30–32 are canceled. *Id.* We have jurisdiction under 35 U.S.C. § 6(b).

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[1] We use the term "Appellant" to refer to "applicant" as defined in 37 C.F.R. § 1.42. Appellant states Weather Alpha LLC, is the real party in interest. Appeal Br. 1.

We AFFIRM.[2]

STATEMENT OF THE CASE

The claims relate to a system for targeting contextually relevant digital communications based on weather conditions. *See* Abstract.

Invention

Claims 1, 23, and 37 are independent. An understanding of the invention can be derived from a reading of Claim 1, which is reproduced in Table I, below.

References and Rejections[3]

1. Claims 1–4, 8–10, 15–23, 25, 28, 29, and 33–42 stand rejected under 35 U.S.C. § 101 as directed to an abstract idea without significantly more. Final Act. 2–4.
2. Claims 1–4, 8–10, 16–23, 25, 28, 29, and 33–42 stand rejected under pre-AIA 35 U.S.C. § 102 as anticipated by Tanahashi (US 2003/0187740 A1; Oct. 2, 2002). Final Act. 4–13.
3. Claim 15 stands rejected under pre-AIA 35 U.S.C. § 103 as obvious over Tanahashi and Official Notice. Final Act. 13–14.

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[2] Rather than reiterate the arguments of Appellant and the Examiner, we refer to the Appeal Brief (filed April 5, 2018, "Appeal Br."), the Reply Brief (none filed), the Examiner's Answer (mailed July 27, 2018, "Ans."), the Final Action (mailed August 16, 2017, "Final Act."), and the Specification (filed October 5, 2011, "Spec.") for their respective details.

[3] The present Application is being examined under the pre-AIA first to invent provisions. Final Act. 2.

ANALYSIS

We have reviewed the rejections of Claims 1–4, 8–10, 15–23, 25, 28, 29, and 33–42 in light of Appellant's arguments. We consider Appellant's arguments as they are presented in the Appeal Brief, pages 11–22..

For the reasons that follow, we are not persuaded the Examiner has erred with respect to the rejections under § 101, but are persuaded of error with respect to the rejections under §§ 102 and 103.

Claims 1–4, 8–10, 15–23, 25, 28, 29, and 33–42:

INELIGIBLE SUBJECT MATTER.

Appellant argues Claims 1–4, 8–10, 15–23, 25, 28, 29, and 33–42 as a group in view of the limitations of the independent claims. Appeal Br. 17. Therefore, we decide the appeal of the § 101 rejections with reference to Claim 1 and refer to the rejected claims collectively herein as "the claims." *See* 37 C.F.R. § 41.37(c)(1)(iv); *see also In re King*, 801 F.2d 1324, 1325 (Fed. Cir. 1986).

We reviewed the record *de novo*. *SiRF Tech., Inc. v. Int'l Trade Comm'n*, 601 F.3d 1319, 1331 (Fed. Cir. 2010) ("Whether a claim is drawn to patent-eligible subject matter is an issue of law that we review de novo."). Based upon our review of the record in light of recent policy guidance with respect to patent-eligible subject matter rejection under 35 U.S.C. § 101,[4] we

[4] *See* 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) ("Revised Guidance").

affirm the rejection of Claims 1–4, 8–10, 15–23, 25, 28, 29, and 33–42 for the specific reasons discussed below.

The Rejection and Appellant's Contentions.

The Examiner finds the claims are directed to tailoring content based on information about the user, found to be abstract in "*Int. Ventures v. Cap One Bank '382*," to organizing and manipulating information through mathematical correlations, found to be abstract in *Digitech*, and to information collection, analysis, and display, found to be abstract in *Electric Power Group*. Final Act. 2. The Examiner further finds the additional limitations are conventional computer elements, specified at a high level of generality, which do not add meaningful limitations to the practice of the abstract ideas. *Id.* 2–3.

Appellant contends the Examiner's over-generalization suggests the claimed invention is abstract, but that the many, specific claimed limitations cause the claims to be narrow and certainly not conventional, abstract, or generic. Appeal Br. 12. Appellant argues the invention improves cellphone technology by improving methods of choosing an appropriate subset of data from a database so as to limit the information that must be displayed. Appeal Br. 13. Appellant argues this technological improvement is particularly important when working with cellphone applications where limited data transmission rates, high costs, and/or limited screen size challenge the industry. *Id.* Appellant concludes by being able to use rule based information trees, the method increases speed and limits the amount of unnecessary information that must be transmitted and displayed. *Id.*

35 U.S.C. § 101

Section 101 provides that a patent may be obtained for "any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof." 35 U.S.C. § 101. The Supreme Court has long recognized, however, that § 101 implicitly excludes "[l]aws of nature, natural phenomena, and abstract ideas" from the realm of patent-eligible subject matter, as monopolization of these "basic tools of scientific and technological work" would stifle the very innovation that the patent system aims to promote. *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)); *see also Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 72–78 (2012); *Diamond v. Diehr*, 450 U.S. 175, 185 (1981).

Under the mandatory Revised Guidance, we reconsider whether Appellant's claims recite:

1. any **judicial exceptions**, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human interactions such as a fundamental economic practice, or mental processes), and
2. **additional elements** that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h)).

Only if a claim, (1) recites a judicial exception, and (2) does not integrate that exception into a practical application, do we then reach the issue of 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.

A. Whether the claims recite a judicial exception.

The Revised Guidance extracts and synthesizes key concepts identified by the courts as abstract ideas to explain that the abstract-idea exception includes the following groupings of subject matter, when recited as such in a claim limitation(s) (that is, when recited on their own or *per se*): (a) mathematical concepts,[5] i.e., mathematical relationships, mathematical formulas, equations,[6] and mathematical calculations[7]; (b) certain methods of organizing human activity—fundamental economic principles or practices (including hedging, insurance, mitigating risk); commercial or legal interactions (including agreements in the form of contracts; legal obligations; advertising, marketing or sales activities or behaviors; business

[5] *Bilski v. Kappos*, 561 U.S. 593, 611 (2010) ("The concept of hedging . . . reduced to a mathematical formula . . . is an unpatentable abstract idea.").

[6] *Diehr*, 450 U.S. at 191 ("A mathematical formula as such is not accorded the protection of our patent laws"); *Parker v. Flook*, 437 U.S. 584, 594 (1978) ("[T]he discovery of [a mathematical formula] cannot support a patent unless there is some other inventive concept in its application.").

[7] *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1163 (Fed. Cir. 2018) (holding that claims to a "series of mathematical calculations based on selected information" are directed to abstract ideas).

relations); managing personal behavior or relationships or interactions between people (including social activities, teaching, and following rules or instructions)[8]; and (c) mental processes—concepts performed in the human mind (including observation, evaluation, judgment, opinion).[9]

Claim 1.

The preamble of Claim 1 recites: "[a] computerized method of analyzing weather data to improve the selection of contextually relevant communications, the computerized method, executed by one or more processor components, comprising." Table I compares the remaining limitations of Claim 1 to the categories of abstract ideas set forth in the Revised Guidance.

Claim 1	Revised Guidance
[a][10] receiving passive geolocation information regarding a viewer's current geographic location from a requestor, wherein the passive geolocation information is any geolocation information that does	Mere data-gathering, insignificant extra-solution activity step. Rev. Guid. 55, n. 31.

[8] *Alice*, 573 U.S. at 219–20 (concluding that use of a third party to mediate settlement risk is a "fundamental economic practice" and thus an abstract idea); *see* Revised Guidance, at 52 n.13 for a more extensive listing of "certain methods of organizing human activity" that have been found to be abstract ideas.

[9] *Mayo*, 566 U.S. at 71 ("'[M]ental processes[ ] and abstract intellectual concepts are not patentable, as they are the basic tools of scientific and technological work'" (quoting *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972))).

[10] Step designators, e.g., "[a]" were added to facilitate discussion.

not directly identify a viewer's location and that is not entered by the viewer, and is automatically obtained without viewer input;	
[b] collecting current weather data related to the viewer's passive geolocation information;	Mere data-gathering, insignificant extra-solution activity step. Rev. Guid. 55, n. 31.
[c] analyzing the collected current weather data related to the viewer's passive geolocation information;	Mental process, i.e., concept performed in human mind. Rev. Guid. 52.
[d] sorting the analyzed collected current weather data into discrete variables;	Mental process, i.e., concept performed in human mind. Rev. Guid. 52.
[e] passing the collected current weather data through a plurality of rule-based logical arguments;	Mental process, i.e., concept performed in human mind. Rev. Guid. 52.
[f] accessing one or more of past, current or forecast weather data relevant to the location from a weather information database, wherein the analyzed current weather data relevant to the location relates to at least one weather condition for the location, and wherein the weather condition comprises: temperature information, and climatological data;	Mere data-gathering, insignificant extra-solution activity step. Rev. Guid. 55, n. 31.
[g] obtaining a current temperature condition of the viewer's current geographic location from a weather observation data center;	Mere data-gathering, insignificant extra-solution activity step. Rev. Guid. 55, n. 31.

[h] receiving a climatological mean temperature for the date, time and location of the viewer's current geographic location from a weather observation data center database;	Mere data-gathering, insignificant extra-solution activity step. Rev. Guid. 55, n. 31.
[i] identifying a current weather condition, comprising:	Mental process, i.e., concept performed in human mind. Rev. Guid. 52.
[j] analyzing a temperature threshold based on whether the current temperature condition is a predetermined amount above or below the climatological mean temperature for the date, time and location at which a communication is to be displayed and the communication is to be displayed at or near the viewer's geographic location;	Mental process, i.e., concept performed in human mind. Rev. Guid. 52.
[k] comparing the current temperature condition to the temperature threshold to determine if the current temperature condition is above or below the climatological mean to identify a temperature anomaly weather condition,	Mental process, i.e., concept performed in human mind. Rev. Guid. 52.
[l] accessing a website advertisement server database containing a plurality of available advertisements assigned to weather conditions, and	Mere data-gathering, insignificant extra-solution activity step. Rev. Guid. 55, n. 31.

[m] selecting a communication associated with the identified weather condition and the rule-based logical arguments in regards to the current weather data.	Mental process, i.e., concept performed in human mind. Rev. Guid. 52.

Thus, under Step 2A(i), we find limitations [c, d, e, i, j, k, and m] recite steps which fit within the Revised Guidance category of "mental processes." The remaining limitations: [a, b, f, g, h, and l] recite mere data-gathering, insignificant extra-solution activity steps.

Step 2A(ii): Judicial Exception Integrated into a Practical Application?

If the claims recite a patent-ineligible concept, as we conclude above, we proceed to the "practical application" *Step 2A(ii)* wherein we determine whether the recited judicial exception is integrated into a practical application of that exception by: (a) identifying whether there are any additional elements recited in the claim beyond the judicial exception(s); and (b) evaluating those additional elements individually and in combination to determine whether they integrate the exception into a practical application.

For the reasons which follow, we conclude that Appellant's claims do not integrate the judicial exception into a practical application.

MPEP § 2106.05(a) "Improvements to the Functioning of a Computer or To Any Other Technology or Technical Field."

"In determining patent eligibility, examiners should consider whether the claim 'purport(s) to improve the functioning of the computer itself'" or "any other technology or technical field." MPEP § 2106.05(a).

With respect to technological improvements, Appellant contends the

"claims are directed to complicated systems operated by computing devices and improving visualization of the parts of specific data losses that are most relevant." Appeal Br. 13.

We are aware of no limitations in the claims directed to "specific data losses." Nor does Appellant so direct our attention. Appellant discloses:

> The Digital Communication Management System (DCMS) provides a method for dynamically selecting, rotating or altering digital advertisements based on constantly changing weather conditions, thereby allowing advertisers to include weather specific details and improve the contextual accuracy in targeting such advertisements.

Spec., ¶ 10 ("Summary" [of Invention]). Appellant fails to refer to any Specification disclosure relevant to technological improvements to data losses that may be experienced by computing devices. Rather, the Specification relates to "the contextual accuracy in targeting such [weather-related] advertisements." *Id.* Advertising, marketing, and sales activities are ineligible subject-matter methods of organizing human activity. *See* Rev. Guid. 52.; *see also Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed Cir. 2014) (holding that claim ''describe[ing] only the abstract idea of showing an advertisement before delivering free content'' is patent ineligible).

Appellant contends: "the claims also implicate complex GPS circuits needed to provide location information for the logic trees." Appeal Br. 14. Contrary to Appellant, a GPS device is not recited in the claims, nor does the Specification define "location information" in a manner to require a GPS device. *See* Spec., ¶ 31 ("[g]eolocation information need not include location

data; it is sufficient that the information is capable of identifying location through cross referencing a database. A device's IP address, for example, may be used to identify the devices geolocation.").

Appellant argues the claims: "address a business challenge (determining user location without receiving user input, accessing weather information from various databases, and performing data analysis and statistics on information to output a particular result) that is particular to the Internet." *Id.* (citing *DDR Holdings*[11]). Contrary to Appellant's interpretation, the *DDR Holdings* Court found: "[i]nstead of the computer network operating in its normal, expected manner . . . . [w] When the limitations of the '399 patent's asserted claims are taken together as an ordered combination, the claims recite an invention that is not merely the routine or conventional use of the Internet." *DDR Holdings*, 773 F.3d at 1258–9. Appellant has not persuaded us that the claimed invention is other than a "routine or conventional use of the Internet." *Id.*

Appellant also analogizes the present invention to that of *McRo*[12] "where the Federal Circuit held that a genus of rules elevates an invention to being patent eligible whether or not these could previously be performed by humans." Appeal Br. 15. Contrary to Appellant, *McRo* did not relate to a mere "genus of rules," but rather to an "ordered combination" of "unconventional rules." "We hold that the ordered combination of claimed

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[11] *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1258-59 (Fed. Cir. 2014).

[12] *McRo, Inc. v. Bandai Namco Games America Inc.*, No. 2015-1080, 2016 WL 4896481 (Fed. Cir. Sept. 13, 2016).

steps, using unconventional rules that relate subsequences of phonemes, timings, and morph weight sets, is not directed to an abstract idea and is therefore patent-eligible subject matter under § 101." *McRo*, 837 F.3d 1299, 1303. Appellant has not persuaded that the claimed rules are "unconventional."

MPEP § 2106.05(b) Particular Machine.

As discussed above, "complex GPS circuits" are not required by the claims. Instead, a "device's IP address, for example, is passive geolocation information." Spec., ¶ 32. Moreover, Appellant fails to identify any disclosure in the Specification indicative of specialized computer hardware or software.

MPEP § 2106.05(c) Particular Transformation.

This section of the MPEP guides: "Another consideration when determining whether a claim recites significantly more is whether the claim effects a transformation or reduction of a particular article to a different state or thing." "'Transformation and reduction of an article to a different state or thing is *the clue* to the patentability of a process claim that does not include particular machines.'" *Bilski*, 561 U.S. at 658 (quoting *Benson*, 409 U.S. at 70).

The claims select and analyze certain electronic data, i.e., building permit data. Spec. ¶ 3 ("The technology relates to the field of targeting contextually relevant communications."); *see also* Spec., ¶10 ("The Digital Communication Management System (DCMS) provides a method for

dynamically selecting, rotating or altering digital advertisements based on constantly changing weather conditions, thereby allowing advertisers to include weather specific details and improve the contextual accuracy in targeting such advertisements."). The selection of electronic data is not a "transformation or reduction of an *article* into a different state or thing constituting patent-eligible subject matter[.]" *See In re Bilski*, 545 F.3d 943, 962 (Fed. Cir. 2008) (emphasis added); *see also CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1375 (Fed. Cir. 2011) ("The mere manipulation or reorganization of data . . . does not satisfy the transformation prong."). Applying this guidance here, we conclude Appellant's method claims fail to satisfy the transformation prong of the *Bilski* machine-or-transformation test.

MPEP § 2106.05(e) Other Meaningful Limitations.

This section of the MPEP guides:

> *Diamond v. Diehr* provides an example of a claim that recited meaningful limitations beyond generally linking the use of the judicial exception to a particular technological environment. 450 U.S. 175 . . . (1981). In *Diehr*, the claim was directed to the use of the Arrhenius equation (an abstract idea or law of nature) in an automated process for operating a rubber-molding press. 450 U.S. at 177-78 . . . . The Court evaluated additional elements such as the steps of installing rubber in a press, closing the mold, constantly measuring the temperature in the mold, and automatically opening the press at the proper time, and found them to be meaningful because they sufficiently limited the use of the mathematical equation to the practical application of molding rubber products. 450 U.S. at 184, 187 . . . . In contrast, the claims in *Alice Corp. v. CLS Bank International* did not meaningfully limit the abstract idea of mitigating settlement risk. 573 U.S. . . . . In particular, the

> Court concluded that the additional elements such as the data processing system and communications controllers recited in the system claims did not meaningfully limit the abstract idea because they merely linked the use of the abstract idea to a particular technological environment (i.e., "implementation via computers") or were well-understood, routine, conventional activity.

MPEP § 2106.05(e).

"[T]he relevant question is whether the claims here do more than simply instruct the practitioner to implement the abstract idea . . . on a generic computer." *Alice*, 573 U.S. at 225. Similarly as for *Alice*, we find that "[t]aking the claim elements separately, the function performed by the computer at each step of the process is '[p]urely conventional.'" *Id.* "In short, each step does no more than require a generic computer to perform generic computer functions." *Id.*

We find that Appellant's claims do not add meaningful limitations beyond generally linking the use of the judicial exception to a particular technological environment.

MPEP § 2106.05(f) Mere Instructions To Apply An Exception.

Appellant does not persuasively argue that their claims do any more than to merely invoke generic computer components merely as a tool in which the computer instructions apply the judicial exception.

MPEP § 2106.05(g) Insignificant Extra-Solution Activity.

The claims store data. We find the claimed data-gathering steps to be a classic example of insignificant extra-solution activity. *See, e.g.*, *Bilski*, 545 F.3d at 963 (en banc), *aff'd sub nom, Bilski*, 561 U.S. 593.

MPEP § 2106.05(h) Field of Use and Technological Environment.

> [T]he Supreme Court has stated that, even if a claim does not wholly pre-empt an abstract idea, it still will not be limited meaningfully if it contains only insignificant or token pre- or post-solution activity—such as identifying a relevant audience, a category of use, field of use, or technological environment.

Ultramercial, Inc. v. Hulu, LLC, 722 F.3d 1335, 1346 (Fed. Cir. 2013). We find the claimed "receiving passive geolocation information regarding a viewer's current geographic location" and "selecting a communication associated with the identified weather condition" limitations to be simply a field of use that attempts to limit the abstract idea to a particular environment.

We do not find Appellant's arguments to be persuasive because "[t]he courts have also identified examples in which a judicial exception has not been integrated into a practical application." Rev. Guid. 55. The claims fail to recite a practical application where the additional element does more than generally link the use of a judicial exception to a particular technological environment or field of use. *Id.* The mere application of an abstract idea in a particular field is not sufficient to integrate the judicial exception into a practical application. *See id.* at n.32. In view of the foregoing, we conclude the claims are "directed to" a judicial exception.

1. Well-understood, routine, conventional.

Because the claims recite a judicial exception and do not integrate that exception into a practical application, we must then reach the issue of whether the claim adds a specific limitation beyond the judicial exception

that is not "well-understood, routine, conventional" in the field. Revised Guidance, 84 Fed. Reg. at 56.

The written description describes the claimed computer system consistent with its being "well-understood, routine, [and] conventional": "The DCMS can be used to display communications in any digital medium, including, without limitation, websites, televisions, digital billboards, and mobile device applications." Spec. ¶ 12.

2. Specified at a high level of generality.

It is indicative of the absence of an inventive concept where the claims simply append well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception. Rev. Guid., 56.

The claims fail to recite any specific steps of an algorithm, nor does Appellant cite Specification disclosure for the required specificity.

We find the limitations are specified at such a high level of generality consistent with the absence of an inventive concept. Therefore, we conclude that none of the claim limitations, viewed "both individually and as an ordered combination," amount to significantly more than the judicial exception in order to sufficiently transform the nature of the claims into patent-eligible subject matter. *See Alice*, 573 U.S. at 217 (internal quotations omitted) (quoting *Mayo*, 566 U.S. at 79).

In view of the foregoing, we sustain the rejection of Claims 1–4, 8–10, 15–23, 25, 28, 29, and 33–42 under 35 U.S.C. § 101.

CLAIMS 1–4, 8–10, 16–23, 25, 28, 29, AND 33–42:

ANTICIPATION BY TANAHASHI.

Claim 1 recites, *inter alia*, "receiving passive geolocation information regarding a viewer's current geographic location." The Examiner finds Tanahashi discloses this limitation. Final Act. 4 (citing Tanahashi, ¶ 59)

Tanahashi paragraph 13 (cited by the Examiner) relates to the store's location, not the viewer's location. "The web server 100 includes . . . store information 114"). The Answer finds "it is apparent that Tanahishi [*sic* "Tanahashi"] updates the location of the store as it pertains to the weather forecast."

Because we find Tanahashi fails to disclose at least one claimed limitation, we decline to sustain the rejection of Claims 1–4, 8–10, 16–23, 25, 28, 29, and 33–42 as anticipated.

CLAIMS 15: OBVIOUSNESS OVER

OVER TAKAHASHI AND OFFICIAL NOTICE.

The Official Notice, as taken by the Examiner, does not relate to the user's location limitation discussed in the context of anticipation. "Official Notice is hereby taken that it is old and well known to determine a record temperature has been broken when collecting weather data and comparing it to historical climatological temperature." Final Act. 14.

Because we find Tanahashi fails to disclose at least one claimed limitation, we decline to sustain the rejection of Claim 15 as obvious.

CONCLUSION

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–4, 8–10, 15–23, 25, 28, 29, and 33–42	101	Ineligible Subject Matter	1–4, 8–10, 15–23, 25, 28, 29, and 33–42	--
1–4, 8–10, 16–23, 25, 28, 29, and 33–42	102	Tanahashi	--	1–4, 8–10, 16–23, 25, 28, 29, and 33–42
15	103	Tanahashi and Official Notice	--	15
Overall Outcome			1–4, 8–10, 15–23, 25, 28, 29, and 33–42	

Because we have affirmed at least one ground of rejection with respect to each claim on appeal, the Examiner's decision is affirmed. *See* 37 C.F.R. § 41.50(a)(1).

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). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED