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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* JAMES G. MCLEAN

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Appeal 2019-001611  
Application 14/133,881<sup>1</sup>  
Technology Center 2400

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Before CAROLYN D. THOMAS, JON M. JURGOVAN, and  
IFTIKHAR AHMED, *Administrative Patent Judges*.

AHMED, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner’s final rejection of claims 7–10, 12–18, and 20, which are the only claims pending in the application. Claims 1–6, 11, and 19 have been cancelled. Appeal Br. 14, 15, 17. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> We use the word Appellant to refer to “applicant” as defined in 37 C.F.R. § 1.42(a). According to Appellant, Lenovo Enterprise Solutions (Singapore) Pte. Ltd. is the real party in interest. Appeal Br. 2.

*Technology*

The application relates to “streaming media playback and more particularly to selection of streaming media segments for playback in a computer communications network.” Spec. ¶ 2.

*Illustrative Claims*

Claim 7 is illustrative and reproduced below with the limitation at issue under 35 U.S.C. § 103 underlined (all emphasis and reformatting added):

7. A streaming media data processing system comprising:

a media player executing in memory of a computer and communicatively coupled to a streaming media server over a computer communications network, the media player receiving from the streaming media server different segments of streaming media for playback in sequence; and,

an alternate media playback module executing in the memory of the computer, the module comprising program code enabled

to reject playback of one of the different segments during playback of the one of the different segments,

to select an alternate segment for playback in the media player in place of the rejected one of the different segments, and

to direct the media player to play back the alternate segment in place of the rejected one of the different segments,

wherein the alternate segment is selected based upon a playback time of the alternate selection most closely matching a remaining playback time of the rejected one of the different segments.

### *Rejections*

Claims 7–10, 12–18, and 20 stand rejected under 35 U.S.C. § 101 as being directed to ineligible subject matter without significantly more. Final Act. 2–6.

Claims 7, 13, and 14 stand rejected under 35 U.S.C. § 103 as obvious over the combination of Evans (US 2012/0066404 A1; Mar. 15, 2012) and Ellanti (US 2010/0088716 A1; Apr. 8, 2010). Final Act. 6–8.

Claims 8, 10, 15, 16, and 18 stand rejected under 35 U.S.C. § 103 as obvious over the combination of Evans, Ellanti, and Drake (US 2010/0290761 A1; Nov. 18, 2010). Final Act. 8–11.

Claims 9 and 17 stand rejected under 35 U.S.C. § 103 as obvious over the combination of Evans, Ellanti, Drake, and Freed (US 2015/0163545 A1; June 11, 2015). Final Act. 12.

Claims 12 and 20 stand rejected under 35 U.S.C. § 103 as obvious over the combination of Evans, Ellanti, Drake, and Raghuvamshi (US 2006/0287912 A1; Dec. 21, 2006). Final Act. 12–15.

### ISSUES

1. Did the Examiner err in concluding that claims 7–10, 12–18, and 20 are directed to ineligible subject matter without significantly more under § 101?

2. Did the Examiner err in concluding that the combination of Evans and Ellanti teaches or suggests “select[ing] an alternate segment for playback in the media player in place of the rejected one of the different segments, . . . wherein the alternate segment is selected based upon a playback time of the alternate selection most closely matching a remaining

playback time of the rejected one of the different segments,” as recited in claim 7?

## ANALYSIS

### *§ 101 Rejection*

Section 101 defines patentable subject matter: “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.” *See* 35 U.S.C. § 101. The Supreme Court, however, has “long held that this provision contains an important implicit exception” that “[l]aws of nature, natural phenomena, and abstract ideas are not patentable.” *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 70 (2012) (quotation omitted). “Eligibility under 35 U.S.C. § 101 is a question of law, based on underlying facts.” *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1166 (Fed. Cir. 2018). To determine patentable subject matter, the Supreme Court has set forth a two part test.

“First, we determine whether the claims at issue are directed to one of those patent-ineligible concepts” of “laws of nature, natural phenomena, and abstract ideas.” *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 217 (2014). “The inquiry often is whether the claims are directed to ‘a specific means or method’ for improving technology or whether they are simply directed to an abstract end-result.” *RecogniCorp, LLC v. Nintendo Co.*, 855 F.3d 1322, 1326 (Fed. Cir. 2017). A court must be cognizant that “all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas” (*Mayo*, 566 U.S. at 71), and “describing the claims at . . . a high level of abstraction and untethered from the language of

the claims all but ensures that the exceptions to [section] 101 swallow the rule.” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1337 (Fed. Cir. 2016). Instead, “the claims are considered in their entirety to ascertain 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).

If the claims are directed to an abstract idea or other ineligible concept, then we continue to the second step and “consider the elements of each claim both individually and ‘as an ordered combination’ to determine whether the additional elements ‘transform the nature of the claim’ into a patent-eligible application.” *Alice*, 573 U.S. at 217 (quoting *Mayo*, 566 U.S. at 79, 78). The Supreme Court has “described step two of this analysis 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.” *Id.* at 217–18 (quotation omitted).

The U.S. Patent & Trademark Office has published revised guidance on the application of § 101. *See* USPTO, *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Guidance”). Under that guidance, we look to whether the claim recites

- (1) a judicial exception, such as a law of nature or any of the following groupings of abstract ideas:
  - (a) mathematical concepts, such as mathematical formulas;
  - (b) certain methods of organizing human activity, such as a fundamental economic practice; or

- (c) mental processes, such as an observation or evaluation performed in the human mind;
- (2) any additional limitations that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h));<sup>2</sup> and
- (3) any additional limitations beyond the judicial exception that, alone or in combination, were not “well-understood, routine, conventional” in the field (*see* MPEP § 2106.05(d)).

*See* Guidance, 84 Fed. Reg. at 52, 55, 56. Under the Guidance, if the claim does not recite a judicial exception, then it is eligible under § 101 and no further analysis is necessary. *Id.* at 54. Similarly, under the Guidance, “if the claim as a whole integrates the recited judicial exception into a practical application of that exception,” then no further analysis is necessary. *Id.* at 53–54.

The Examiner concludes that claims 7–10, 12–18, and 20 are directed to patent-ineligible subject matter. Final Act. 2–5; Ans. 4. For the reasons discussed below, we are not persuaded that the Examiner has erred.

*A) USPTO Step 1*

Applying Step 1 of the Guidance (which is unchanged from the prior guidance) to the present case, we determine independent claim 7<sup>3</sup> recites a

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<sup>2</sup> 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* Guidance 84 Fed. Reg. at 54–55.

<sup>3</sup> Appellant does not separately argue each of the rejected claims. Appeal Br. 4. We select claim 7 as representative of all rejected claims for our

“streaming media data processing system,” which is a form of “machine,” thereby falling within one of the categories enumerated under § 101 and satisfying Step 1 of the Revised Guidance. *See* Guidance, 84 Fed. Reg. at 53–54.

*B) USPTO Step 2A, Prong 1*

The Examiner determines that “[t]he claim(s) are directed to the abstract idea of streaming media segments for playback by selecting a more appropriate segment.” Ans. 4 (emphasis omitted); Final Act. 3–4. More specifically, the Examiner finds, “the concept of streaming media segments for playback by selecting a more appropriate segment relates to tracking or organizing information,” i.e., “a mental process (thinking) that ‘can be performed in the human mind, or by a human using a pen and paper.’” Ans. at 4–5 (citing *Electric Power Group v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016)). The Examiner finds that the idea claimed is akin to the customizing information based on information known about the user. *Id.* at 6. According to the Examiner, tailoring the selection of an alternate segment as claimed is similar to tailoring television advertisements based on the time of day during which the advertisement will be viewed. *Id.* at 6–7.

Appellant argues that the claims “go beyond the mere collection of information, the analysis of the information and the storage of the analyzed information as suggested by the Examiner.” Appeal Br. 5.

Claim 7 recites, in part, (A) “[selecting] the alternate segment . . . based upon a playback time of the alternate selection most closely matching a remaining playback time of the rejected one of the different segments.”

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§ 101 analysis because it is representative of the claimed invention and incorporates Appellant’s argued features. 37 C.F.R. § 41.37(c)(1)(iv).

Appeal Br. 14. Step (A) recites determining whether an alternate segment that is selected closely matches the playback time remaining for the segment that is currently playing. The Specification explains that the “alternate playback logic 140 *can compare* instances of the alternate media segments 150 in order to identify a particular one of the alternate media segments 150 *most suitable* to playback instead of the rejected one of the segments,” i.e., one “having playback duration which is most closely aligned with a remaining time of playback of the rejected one of the segments.” Spec. ¶ 18 (emphasis added). At a high level, therefore, step (A) simply recites comparing alternate activities to determine which one is long enough, i.e., most suitable to substitute for a partially completed activity, which is a process that can be performed within the human mind (e.g., a person comparing alternate activity options to fill the time originally slotted for a current one that the person no longer wishes to continue) or with a pen and paper. *See Univ. of Utah Research Found. v. Ambry Genetics Corp.*, 774 F.3d 755, 763 (Fed. Cir. 2014) (finding claims to *comparing* BRCA sequences, where such comparison can practically be performed in the human mind, to be directed to an abstract idea); *see also CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1372 (Fed. Cir. 2011) (reasoning that when a person may implement claimed steps by simply writing down the claimed data elements, those steps can all be performed in the human mind); Guidance, 84 Fed. Reg. at 52 n.14 (listing cases).

Therefore, on the record before us, we agree with the Examiner that claim 7 recites a mental process, which is an abstract idea.

*C) USPTO Step 2A, Prong 2*

The analysis under prong 2 considers the claim as a whole, i.e., “the limitations containing the judicial exception as well as the additional elements in the claim besides the judicial exception need to be evaluated together to determine whether the claim integrates the judicial exception into a practical application.” October 2019 Patent Eligibility Guidance Update, at 12, available at <http://www.uspto.gov/PatentEligibility>.

The Examiner determines that the claims here, unlike those in *Enfish*, merely use the computer as a tool to perform the abstract concepts, “are not rooted in technology[,] and simply employ[] conventional techniques used by humans for streaming media segments for playback by selecting a more appropriate segment.” Ans. 7 (citing *Enfish*, 822 F.3d at 1335–36). The Examiner finds that “claim(s) do[] not include additional elements that are sufficient to amount to significantly more than the judicial exception because the additional elements when considered both individually and as an ordered combination do not amount to significantly more than the abstract idea.” *Id.* at 8. The Examiner evaluates each of the additional elements recited in claim 7 to conclude that the “[s]teps that do nothing more than spell out what it means to ‘apply it on a computer’” and cannot confer patent-eligibility. *Id.* at 12. The Examiner determines “[t]he use of generic computer components for streaming media segments for playback by selecting a more appropriate segment through an unspecified interface does not impose any meaningful limit on the computer implementation of the abstract idea,” further adding that “[l]ooking at the limitations as an ordered combination adds nothing that is not already present when looking at the elements taken individually.” *Id.* at 13.

We agree with the Examiner’s analysis. Beyond the abstract idea discussed above, the one additional limitation recited is that the selecting step is performed by “an alternate media playback module executing in the memory of the computer.” Appeal Br. 14. However, “the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention.” *Alice*, 573 U.S. at 222–23. The same is true of the “media player executing in memory of a computer and communicatively coupled to a streaming media server over a computer communications network” that receives the different segments. The substance of the claim can be performed mentally by a human, and “mere automation of manual processes using generic computers does not constitute a patentable improvement in computer technology.” *Credit Acceptance Corp. v. Westlake Servs.*, 859 F.3d 1044, 1055 (Fed. Cir. 2017).

Appellant argues that the claims, including claim 7, “describe a particular solution to a problem or a particular way to achieve a desired outcome defined by the claimed invention, as opposed to merely claiming the idea of a solution or outcome and the collection and manipulation of information.” Appeal Br. 5 (emphasis omitted). We understand Appellant’s argument to be that because claim 7 implements the abstract idea in a media playback solution, the claim describes a “particular solution to a problem.” All the claimed media playback restriction does, however, is “confine the abstract idea to a particular technological environment,” and “merely limiting the field of use of the abstract idea to a particular existing technological environment does not render the claims any less abstract.” *See Affinity Labs of Tex., LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1258–59 (Fed. Cir. 2016); *see also Intellectual Ventures I LLC v. Capital One Bank (USA)*,

792 F.3d 1363, 1366 (Fed. Cir. 2015) (“An abstract idea does not become nonabstract by limiting the invention to a particular field of use or technological environment, such as the Internet.”). The elements of claim 7 therefore fail to provide any meaningful limitation beyond generally linking the use of the abstract idea to a particular technological environment.

Appellant further argues that “claims are directed to a process driven *improvement to computer-related technology*.” Appeal Br. 5. Appellant, however, fails to point to any claim elements “that reflect an improvement in the functioning of a computer, or an improvement to other technology or technical field” and would be indicative of the abstract idea being integrated into a practical application. *See* Guidance, 84 Fed. Reg. at 55 (citing *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1257–59 (Fed. Cir. 2014)); *see also* MPEP § 2106.05(a). As the Examiner correctly points out, the claim language is “stated at a high level of generality without tying it to an algorithm that would improve the functionality of the technology and its broadest reasonable interpretation comprises only streaming media segments for playback by selecting a more appropriate segment through the use of some unspecified generic computers and interface.” Ans. 12–13.

Even when considered as a combination of its elements, claim 7 is directed at nothing more than the abstract idea of comparing alternate activities to determine which one is long enough to substitute for a partially completed activity. Thus, we agree with the Examiner that “[t]here is no indication that the combination of elements improves the functioning of a computer or improves any other technology” (Ans. 13), and claim 7 does not integrate the judicial exception into a practical application. *See* Guidance, 84 Fed. Reg. at 54–56; *see also* MPEP § 2106.05(a)–(c), (e)–(h).

*D) USPTO Step 2B*

Lastly, the Examiner finds that any additional limitations beyond the judicial exception recite “generic computer functions that are well-understood, routine and conventional activities” in the field of the invention. Ans. 12.

We agree with the Examiner that additional claim elements recited in claim 7, beyond the claimed abstract idea, “are recited as performing generic computer functions routinely used in computer applications.” Ans. 11.

Appellant argues that the “Examiner has not provided any factual basis” for that conclusion and that the “Examiner’s analysis has not complied with the April 19th Memorandum and breaches the jurisprudence of *Berkheimer*.”

Appeal Br. at 6–8 (citing *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1369 (Fed. Cir. 2018)). Appellant specifically argues that the claim limitations of rejecting playback of a given segment and selecting an alternate segment for playback are ones that the Examiner has failed to demonstrate are “routine, well-understood and conventional functions.” Reply Br. 5–6. Appellant asserts that the Examiner has failed to show that those “*additional elements of [the] claim* represent well-understood, routine, and conventional activity engaged in by those in the relevant art so that those elements need[ not] be described in detail in a patent application.” *Id.* at 6.

Appellant however ignores the Examiner’s analysis relating to those limitations:

[T]he feature of rejecting a content and replacing with another content is well-known and conventional, as also disclosed by previously cited prior art, Evans. Evans discloses in paragraph [0003] of the background section (Many Internet radio stations provide a skip feature using a unicast communication channel to each user (i.e., each user is delivered a separate radio stream).

As such, each user is enabled to independently skip ahead if they do not want to listen to the current song.).

Ans. 11 (citing Evans ¶ 3). As Appellant acknowledges, “a citation to a publication that demonstrates the well-understood, routine, and conventional [nature] of Appellant[’s] claimed elements” suffices to comply with the April 19<sup>th</sup> *Berkheimer* Memorandum. Appeal Br. 8. Moreover, other references cited by the Examiner in rejecting the pending claims under § 103 support that rejecting playback of one media segment and selecting a different one was a routine, well-understood, and conventional computer function at the time of the invention. *See, e.g.*, Ellanti ¶ 122 (“In case the user skips an advertising being shown in a slot, an alternate advertising may be shown in that slot until the slot is fully played for the duration it was designed.”); Freed ¶ 4 (“The prior art includes a number of ‘commercial skipping’ technologies”).

We also agree with the Examiner that claim elements such as the memory, media player, and streaming media server are all “generic computer functions routinely used in computer applications.” Ans. 11. As the Specification explains, “aspects of the present invention may take the form of an entirely hardware embodiment, an *entirely software* embodiment (including firmware, resident software, micro-code, etc.) or an embodiment combining software and hardware aspects that may all generally be referred to herein as a ‘circuit,’ ‘module’ or ‘system.’” Spec. ¶ 24 (emphasis added); *see also id.* at ¶ 25 (listing various generic types of memory that may be used by the invention). As the Federal Circuit has held, “the use of conventional computer components, such as a database and processors, operating in a conventional manner” “do[es] not confer patent eligibility.” *Intellectual Ventures*, 792 F.3d at 1371; *CyberSource*, 654 F.3d at 1375

(merely claiming a software implementation of a purely mental process that could otherwise be performed without the use of a computer does not alter the method's unpatentability under 35 U.S.C. § 101). We therefore determine that claim 7 does not add significantly more to the patent-ineligible abstract idea.

Because Appellant does not separately argue the Examiner's § 101 rejection of claims 8–10, 12–18, and 20, we also sustain the rejection of those claim under § 101.

*§ 103 Rejections of Claims 7–10, 12–18, and 20*

Independent claim 7 recites selecting an alternate segment for playback “wherein the alternate segment is selected based upon a playback time of the alternate selection most closely matching a remaining playback time of the rejected one of the different segments.” Appeal Br. 14.

Claim 15, the only other independent claim, recites a similar limitation. The Examiner finds that this limitation is taught by Ellanti. Final Act. 7–8 (citing Ellanti ¶ 122); Ans. 16. The Examiner determines that “[t]he function of skipping an advertisement being shown in a slot disclosed in Ellanti is equivalent to the act of rejecting one of the different segments disclosed in the claim.” Ans. 16. According to the Examiner:

Ellanti discloses that if a 30 seconds advertisement (or one of the different segments) is skipped (or rejected) after the advertisement has played for 5 seconds, then an alternate advertisement that is 30 seconds in duration is fetched. Since the remaining playback time in the time slot of the skipped advertisement (or rejected one of the different segments) is 25 seconds, at least 25 seconds of the fetched alternate advertisement is selected to be played to most closely match with the skipped/rejected advertisement's remaining time slot (*or remaining playback time*), wherein *the selection of at least 25*

*seconds of the 30 seconds long fetched alternate advertisement is equivalent to the alternate segment selected based upon a playback time of the alternate selection most closely matching a remaining playback time of the rejected one of the different segments, as claimed by the [A]ppellant.*

Ans. 17 (emphasis added). The Examiner determines that Ellanti teaches “that in fetching other clips one might want to keep the total time to the amount of advertising slotted, and the art took steps to make that fit work,” which the Examiner finds sufficient to teach or suggest the limitation under the broadest reasonable interpretation of the claim.<sup>4</sup> *Id.*

Appellant argues that Ellanti’s system teaches that “alternate advertisements are selected *irrespective of the remaining time of playback of the skipped advertisement.*” Appeal Br. 10 (citing Ellanti ¶ 122). Instead, Appellant contends, “the alternative advertisement is selected based upon the *total* playback time.” *Id.* In the example provided by Ellanti, Appellant points out that when “a 30 second advertisement is skipped after 5 seconds of playback leaving 25 seconds of remaining playback time,” “a replacement advertisement of 25 seconds is not selected.” *Id.* “Rather, a replacement advertisement of 30 seconds is selected—the original length of the skipped

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<sup>4</sup> Additionally, the Examiner determines that “the term ‘most closely matching’ in the claims is a relative term,” and “is not defined by the claim, [and] the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.” Ans. 14–15. The Examiner further finds that “[t]he term ‘most closely matching’ is indefinite for failing to particularly point out and distinctly claim the subject matter which the inventor . . . regards as the invention.” *Id.* at 15. We do not address the Examiner’s determination because the Examiner has not rejected any of the claims under 35 U.S.C. § 112(b). See Final Act. 2 (providing only comments regarding the claim term).

advertisement and not the remaining playback time of 25 seconds.” *Id.* at 10–11. That, Appellant contends, “is the opposite of what has been claimed.” *Id.* at 11; Reply Br. 9–10.

We are persuaded of Examiner error. Claim 7 requires “the alternate segment is selected based upon a playback time of the alternate selection ***most closely matching a remaining playback time*** of the rejected one of the different segments.” Although we agree with the Examiner that Ellanti teaches “playing an alternate advertisement in place of the skipped advertisement in the time slot until the slot is fully played for the duration it was designed” (Ans. 16), there is no teaching or suggestion in Ellanti of selecting an alternate advertisement whose playback time closely matches the *remaining playback time* of the rejected advertisement. In fact, Ellanti teaches that the “alternate advertisements may be shown *partially* or fully *depending when* the previous advertising was stopped and replaced with the new one.” Ellanti ¶ 122 (emphasis added). Because it allows the alternate clip to be stopped midway, Ellanti seeks to ensure that the selected alternate advertisement is also the same length as the original one, i.e., a length matching the *total* playback time of the rejected advertisement. *Id.* (“if an advertising shown is 30 seconds in duration and after 5 seconds one viewer attempts to skip that slot, then an alternate advertising may be fetched *that is also 30 seconds*”) (emphasis added).

Although we agree with the Examiner that the term “most closely matching a remaining playback time” should be given its broadest reasonable interpretation (Ans. 17), we find that the Examiner’s interpretation of the term as broadly meaning “most closely matching a total playback time” reads out the claimed “remaining playback time” from

claim 7. The broadest reasonable interpretation “is an interpretation that corresponds with what and how the inventor describes his invention in the specification, *i.e.*, an interpretation that is ‘consistent with the specification.’” *In re Smith Int’l, Inc.*, 871 F.3d 1375, 1383 (Fed. Cir. 2017) (citing *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997); *In re Suitco Surface, Inc.*, 603 F.3d 1255, 1259–60 (Fed. Cir. 2010)). The Specification explains that “a particular one of the alternate media segments 150 having a playback duration which is most closely aligned with a remaining time of playback of the rejected one of the segments 130A, 130B, 130N can be identified and played back *in lieu of* the rejected one of the segments.” Spec. ¶ 18 (referring to Fig. 1) (emphasis added). The Specification further adds “to the extent that the playback duration of the particular one of the alternate media segments 150 *is less than the remaining time* of the playback of the rejected one of the segments 130A, 130B, 130N, a buffer segment can be selected,” where the length of the buffer segment covers any remaining playback time. *Id.* (emphasis added). The broadest reasonable interpretation of “most closely matching a remaining playback time” is one that is consistent with a time left after a subtraction. We therefore agree with Appellant that the Examiner has failed to sufficiently explain how Ellanti teaches an “alternate segment [that] is selected based upon a playback time of the alternate selection *most closely matching a remaining playback time* of the rejected one of the different segments,” in the manner recited in claim 7.

The Examiner also does not rely on Evans as teaching this limitation. Final Act. 7–8. Accordingly, we do not sustain the Examiner’s obviousness

rejection of independent claims 7 and 15, and their dependent claims 8–10, 12–14, 16–18, and 20.

### DECISION

For the reasons above, we *affirm* the Examiner’s decision rejecting claims 7–10, 12–18, and 20 under § 101 but *reverse* the Examiner’s rejection of those claims under § 103.<sup>5</sup>

<b>Claims Rejected</b>	<b>Statute</b>	<b>Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
7–10, 12–18, 20	§ 101	Eligibility	7–10, 12–18, 20	
7, 13, 14	§ 103	Evans, Ellanti		7, 13, 14
8, 10, 15, 16, 18	§ 103	Evans, Ellanti, Drake		8, 10, 15, 16, 18
9, 17	§ 103	Evans, Ellanti, Drake, Freed		9, 17
12, 20	§ 103	Evans, Ellanti, Drake, Raghuvamshi		12, 20
<b>Overall Outcome</b>			7–10, 12–18, 20	

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<sup>5</sup> Appellant cites co-pending Appeal No. 2019-001613, in U.S. Patent Application No. 14/151,798, as a related appeal. Appeal Br. 2. In the co-pending application, the Examiner provisionally rejects claims 1 and 3–6 on the ground of nonstatutory double patenting as being unpatentable over claims 7, 9, 10, 12, 15, 17, 18, and 20 of this application. *See* Application No. 14/151,798, Final Act. 3–4. In the event that the co-pending application is permitted to issue as a patent, the Examiner must determine whether a nonstatutory double patenting rejection should be maintained against claims 7, 9, 10, 12, 15, 17, 18, and 20 in this application. *See* MPEP § 1490 VI.D.2.

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TIME TO RESPOND

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