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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JOHN F. MERRYMAN, DENNIS LIPOVSKY, and
NATHANIEL STEVENS

Appeal 2019-001859
Application 14/191,802
Technology Center 3600

Before MICHAEL J. STRAUSS, MICHAEL M. BARRY, and
PHILLIP A. BENNETT, *Administrative Patent Judges*.

BENNETT, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 31–57. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ We use the word “Appellant” to refer to “[A]pplicant” as defined in 37 C.F.R. § 1.42(a). Appellant identifies the real party in interest as Yodle Web.com, Inc. Appeal Br. 2.

CLAIMED SUBJECT MATTER

The claims are directed to generating an online marketing campaign. Spec., Title. Claim 31, reproduced below, is illustrative of the claimed subject matter:

31. A method for generating keywords to be used in an online marketing campaign, the method comprising:

reviewing, via at least one computing device, a taxonomy that specifies a marketing campaign template for at least one business service category, the marketing campaign template including a list of keywords that represent a best practices list of keywords for the at least one business service category for use in a search engine and/or online directory, a first portion of the list of keywords corresponding to a search engine keyword to be purchased, a second portion of the list of keywords corresponding to a respective online directory category in which to purchase a listing, the taxonomy being stored in a data store that is accessible to the at least one computing device;

monitoring, via the at least one computing device, interactions by a plurality of first client devices with one or more network sites associated with a plurality of businesses to determine a network activity campaign performance of a plurality of online marketing campaigns of the plurality of businesses, the plurality of online marketing campaigns created to generate network traffic to the one or more network sites associated with the plurality of businesses, individual online marketing campaigns of the plurality of online marketing campaigns being defined according to the marketing campaign template including list of keywords associated with the at least one business service category, and the list of keywords being purchased by the plurality of businesses;

modifying, via the at least one computing device, the list of keywords of the marketing campaign template based at least in part on an evaluation of the network activity campaign performance associated with at least one hundred of the plurality of businesses, wherein modifying the list of keywords includes at least one of adding or removing individual keywords based at

least in part on at least one of an underperformance or an expected performance of the individual keywords;

generating, via the at least one computing device, a new online marketing campaign in response to a request from a new business, the request identifying the at least one business service category and at least one new keyword that is not included in the list of keywords, the new online marketing campaign being based at least in part on the marketing campaign template including the list of keywords for the at least one business service category and the at least one new keyword, the at least one new keyword being provided by the new business via a particular client device, and the at least one new keyword being purchased for use in the new online marketing campaign;

in response to generating the new online marketing campaign for the new business, monitoring, via the at least one computing device, one or more new interactions by a plurality of second client devices with a network site associated with the new business;

evaluating, via the at least one computing device, a keyword performance of the at least one new keyword based at least in part on the one or more new interactions with the network site, the keyword performance being based at least in part on an amount of website traffic and an amount of conversions generated by the at least one new keyword;

determining, via the at least one computing device, that the at least one new keyword satisfies at least one performance criterion based at least in part on the keyword performance; and

in response to determining that the at least one new keyword satisfies the at least one performance criterion, modifying, via the at least one computing device, the marketing campaign template by adding at least one new keyword to the list of keywords for the at least one business service category.

REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Carver	US 8,180,760 B1	May 15, 2012
Horowitz	US 2005/0097204 A1	May 5, 2005
Collins	US 2007/0027759 A1	Feb. 1, 2007
White	US 2009/0138445 A1	May 28, 2009

REJECTIONS

Claims 31–57 stand rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. Final Act. 3–16.

Claims 31, 33, 34, and 37 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Carver, Collins, and Applicant’s Admitted Prior Art (“AAPA”) as evidenced by Horowitz. Final Act. 17–38.

Claims 32, 35, and 36 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Carver, Collins, AAPA as evidenced by Horowitz, and White. Final Act. 38–42.

Claims 38–41, 45, 46, and 51–54 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Carver and Collins. Final Act. 42–80.

Claims 42–44 and 55–57 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Carver, Collins, AAPA as evidenced by Horowitz, and White. Final Act. 81–84.

Claims 47–50 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Carver, Collins, and AAPA as evidenced by Horowitz. Final Act. 84–90.

REJECTION UNDER 35 U.S.C. § 101

Standard for Patent Eligibility

In issues involving subject matter eligibility, our inquiry focuses on whether the claims satisfy the two-step test set forth by the Supreme Court in *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. 208 (2014). The Court instructs us to “first determine whether the claims at issue are directed to a patent-ineligible concept,” *id.* at 218 , and, in this case, the inquiry centers on whether the claims are directed to an abstract idea. If the initial threshold is met, we then move to the second step, in which we “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.” *Id.* at 217–18 (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 79, 78 (2012)). The Court describes the second step 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.* (quoting *Mayo*, 566 U.S. at 72–73).

The USPTO has published revised guidance on the application of § 101 consistent with *Alice* and subsequent Federal Circuit decisions. USPTO, *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Guidance”). Under the Guidance, 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) (referred to Step 2A, prong 1 in the Guidance); and
(2) additional elements that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h)) (referred to Step 2A, prong 2 in the Guidance).

See 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 move to Step 2B of the Guidance. There, we look to whether the claim:

(3) adds a specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field (*see* MPEP § 2106.05(d)); or
(4) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.

See Guidance, 84 Fed. Reg. at 56.

Examiner’s Findings and Conclusion

The Examiner rejects claim 31 as being directed to a judicial exception without significantly more under *Alice*. Final Act. 3–16. In the first step of the *Alice* inquiry, the Examiner determines claim 31 is directed to “a combination of abstract ideas, specifically mental acts of reviewing a set of words in a best practices list that are advantageous to use for marketing, adopting a marketing campaign that uses a ‘new’ keyword, evaluating the performance of the ‘new’ keyword, if it performs well, adding the ‘new’ keyword to the best practices list.” Final Act. 3. The Examiner further determines claim 31 is abstract because:

The concept(s) described in claim [3]1 are not meaningfully different than those concepts found by the courts to be abstract ideas. The claim, individually, as explained above,

is similar to court-identified abstract ideas. The claim, when viewed as a whole or as a combination, is directed to a combination of abstract ideas – namely creation of a searchable structure of information (i.e. taxonomy, searchable based on metric of viewership/clicks which is the “network activity” - See Applicant’s Specification page 3, [lines] 29-32) (Intell. Ventures v. Erie) and collecting information, analyzing it, and displaying it, (Electric Power Group - collecting information on metric related to popularity of keywords, analyzing the metrics (i.e. ranking keywords based on number of clicks), and putting the recommended ranked keywords in the taxonomy, for purposes of a future user to utilize) and accordingly, the claim as a whole is viewed as an abstract idea.

Final Act. 6 (emphasis omitted).

Under *Alice* step 2, the Examiner determines that the claim does “not include additional elements that are sufficient to amount to ‘significantly’ more than the judicial exception” because:

The claim, individually or as a whole, does not include additional elements that are sufficient to amount to “significantly more” than the judicial exception (i.e. the abstract idea) because the additional element(s) or combination of elements in the claim(s) other than the abstract idea per se amount(s) to no more than: an instruction to 1) apply the idea of collecting the data and implementing the abstract idea on a computer . . . - or 2) generic computer functions that are well-understood, routine, and conventional activities previously known to the industry; 3) insignificant extra-solution (mere data gathering); 4) generally linking to a particular technological environment or field of use[]. Viewed individually or as a whole, these additional claim element(s) do not provide meaningful limitation(s) to transform the abstract idea into a patent eligible application of the abstract idea such that the claim(s) amounts to significantly more than the abstract idea itself. The claim fails to recite any improvements to another technology or technical field, improvements to the functioning of the computer itself, use of a particular machine, effecting a transformation or reduction of a

particular article to a different state or thing, adding unconventional steps that confine the claim to a particular useful application, and/or meaningful limitations beyond generally linking the use of an abstract idea to a particular environment. Claim 31 is directed to steps involving a user “reviewing” via a computer, and ending with a computer displaying the results of the analysis by adding, via the computer, the keywords that has more clicks to the list of keywords, but the limitations adds nothing of substance to the underlying abstract idea. The steps of “monitoring” a “network activity” involve receiving information transmitted over a network (conventional computer function) related to the number of clicks for various keywords.

Final Act. 9–10 (internal citations omitted).

Appellant’s Contentions

Appellant argues the claims are not directed to an abstract idea because “the Office Action has taken the abstraction of the claims too far, in a manner that the Supreme Court has cautioned against in *Alice Corp.*” Appeal Br. 11. Appellant asserts the claims are dissimilar to those found ineligible in prior cases because they “are directed towards improved systems for generating and adaptively updating keywords and categories that are optimized to generate traffic to a business’ web site and/or increase revenue for the business.” Appeal Br. 12. Appellant further argues the claims are dissimilar from prior cases in that “the present claims are directed to adaptively updating a taxonomy specifying marketing campaign templates to included keywords optimized to generate traffic to a business website and/or increase revenue for the website based in part on the keywords.” Appeal Br. 13. Appellant further asserts the claims are not directed to an abstract idea because the claims are similar to those found eligible in *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016) and *McRO, Inc. v.*

Bandai Namco Games Am. Inc., 837 F.3d 1299 (Fed. Cir. 2016). Appeal Br. 15–17.

Appellant also challenges the Examiner’s determination under the second step of the *Alice* inquiry. Appeal Br. 18–22. Appellant argues the Examiner has failed to provide sufficient evidentiary support under *Berkheimer v. HP Inc.*, 890 F.3d 1369 (Fed. Cir. 2018) because “the Office Action merely alleges that the claim recites conventional computer components and conventional functions.” Appeal Br. 19. Appellant further asserts the claims include an inventive concept as an ordered combination, similar to the invention in *BASCOM Global Internet Servs. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016). Appeal Br. 21. Finally, Appellant argues that the claims are eligible because they are similar to those found eligible in *Amdocs (Isr.) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288 (Fed. Cir. 2016) in that “the combination of these elements renders these claims not merely a routine or conventional use of technology because they achieve specific, technical solutions to problems in search engines and online marketing campaigns for increasing network traffic, visibility, and ultimately revenue for businesses.” Appeal Br. 22.

*Revised Guidance, Step 2A, Prong One*²
The Judicial Exception

Applying the Guidance, we are not persuaded the Examiner has erred in rejecting claim 31 as being directed to patent-ineligible subject matter. The Guidance instructs us first to determine whether any judicial exception

² Throughout this opinion, we give the claim limitations the broadest reasonable interpretation consistent with the Specification. *See In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997).

to patent eligibility is recited in the claim. The Guidance identifies three judicially-expected groupings: (1) mathematical concepts, (2) certain methods of organizing human activity such as fundamental economic practices and commercial interactions (including . . . advertising, marketing or sales activities or behaviors; business relations), and (3) mental processes. We focus our analysis on the second and third groupings—certain methods of organizing human activity and mental processes.³

We conclude the limitations of claim 31 recite an abstract idea under the Guidance. For example, the Claim 31 recites the limitation:

reviewing . . . a taxonomy that specifies a marketing campaign template for at least one business service category, the marketing campaign template including a list of keywords that represent a best practices list of keywords for the at least one business service category for use in a search engine and/or online directory, a first portion of the list of keywords corresponding to a search engine keyword to be purchased, a second portion of the list of keywords corresponding to a respective online directory category in which to purchase a listing, the taxonomy being stored.

Appeal Br. 43 (Claims Appendix). This limitation recites both marketing (a certain method of organizing human activity) and a mental process under the Guidance. Reviewing a taxonomy for a marketing campaign is a marketing activity. *See In re Ferguson*, 558 F.3d 1359, 1364 (Fed Cir. 2009) (holding

³ Appellant’s arguments against the § 101 rejection are made to the claims generally. We treat claim 31 as representative. 37 C.F.R. § 41.37(c)(1)(iv) (2018) (“When multiple claims subject to the same ground of rejection are argued as a group or subgroup by Appellant, the Board may select a single claim from the group or subgroup and may decide the appeal as to the ground of rejection with respect to the group or subgroup on the basis of the selected claim alone.”).

methods “directed to organizing business or legal relationships in the structuring of a sales force (or marketing company)” to be ineligible). Moreover, such a review could be performed by a person mentally merely by reading materials which describe the taxonomy.

Claim 31 also recites:

monitoring . . . interactions . . . associated with a plurality of businesses to determine a . . . campaign performance of a plurality of . . . marketing campaigns of the plurality of businesses, the plurality of . . . marketing campaigns created to generate . . . traffic to the one or more . . . sites associated with the plurality of businesses, individual . . . marketing campaigns of the plurality of . . . marketing campaigns being defined according to the marketing campaign template including list of keywords associated with the at least one business.

Appeal Br. 43 (Claims Appendix). This limitation also recites marketing and advertising-related activity, and also is a mental process which can be performed through observation. Claim 31 further recites:

modifying . . . the list of keywords of the marketing campaign template based at least in part on an evaluation of the . . . campaign performance associated with at least one hundred of the plurality of businesses, wherein modifying the list of keywords includes at least one of adding or removing individual keywords based at least in part on at least one of an underperformance or an expected performance of the individual keywords.

Appeal Br. 43–44 (Claims Appendix). This limitation, like those before it, recites another advertising-related activity. Here, it describes the familiar practice of evaluating the success of a marketing campaign and changing the campaign based on the results of those evaluation. Claim 31 additionally recites:

generating, . . . a new . . . marketing campaign in response to a request from a new business, the request identifying the at least one business service category and at least one new keyword that is not included in the list of keywords, the new online marketing campaign being based at least in part on the marketing campaign template including the list of keywords for the at least one business service category and the at least one new keyword, the at least one new keyword being provided by the new business . . . , and the at least one new keyword being purchased for use in the new . . . marketing campaign.

Appeal Br. 44 (Claims Appendix). Generating a new marketing campaign in response to a request made by a business is also a marketing activity that is an abstract concept under the Guidance. Although the limitation includes specific details about the contents of the request, including the use of specific keywords to include in the marketing campaign template, those details do not alter the fundamental character of the recited process as an advertising practice. Additionally, this step also could be performed by a human with the aid of pen and paper merely by writing down a specification for a new marketing campaign, including keywords to be purchased in connection with that campaign. Claim 31 further recites:

in response to generating the new online marketing campaign for the new business, monitoring . . . one or more new interactions . . . with a . . . site associated with the new business;
evaluating . . . a keyword performance of the at least one new keyword based at least in part on the one or more new interactions with the . . . site, the keyword performance being based at least in part on an amount of . . . traffic and an amount of conversions generated by the at least one new keyword;
determining . . . that the at least one new keyword satisfies at least one performance criterion based at least in part on the keyword performance.

Appeal Br. 44–45 (Claims Appendix). These limitations also recite abstract ideas under the Guidance. These limitations reflect the customary practice of monitoring and evaluating the effectiveness of a new marketing campaign. Moreover, each of these limitations recites a mental process because they each can be performed by a person using observation (“monitoring”), and exercising evaluation (“evaluating”), and judgment (“determining”). *See* Guidance, 84 Fed. Reg. at 52 (describing mental processes as “concepts performed in the human mind (including an observation, evaluation, judgment, opinion)”). Claim 31 concludes with the limitation:

in response to determining that the at least one new keyword satisfies the at least one performance criterion, modifying . . . the marketing campaign template by adding at least one new keyword to the list of keywords for the at least one business service category.

Appeal Br. 45 (Claims Appendix). This limitation, which recites modifying a marketing campaign template based on performance evaluations, is a commercial practice involving marketing, which is an abstract idea under the Guidance. Additionally, this step could be performed by a person in their mind with the aid of pen and paper merely by writing the new keyword down on an existing list of keywords.

Accordingly, we conclude the claimed process for generating keywords to be used in an online marketing campaign set forth in claim 31 *recites* judicial exceptions of both a mental process and of advertising and marketing, which is a certain method of organizing human activity under the Guidance.

Revised Guidance, Step 2A, Prong Two
Integration of the Judicial Exception into a Practical Application

Having determined that the claim 31 recites a judicial exception, our analysis under the Memorandum turns now to determining whether there are additional elements that integrate the judicial exception into a practical application. *See* Guidance, 84 Fed. Reg. at 54–55 (citing MPEP § 2106.05(a)–(c), (e)–(h)).

Under the Guidance, limitations that are indicative of “integration into a practical application” include:

1. Improvements to the functioning of a computer, or to any other technology or technical field — *see* MPEP § 2106.05(a);
2. Applying the judicial exception with, or by use of, a particular machine — *see* MPEP § 2106.05(b);
3. Effecting a transformation or reduction of a particular article to a different state or thing — *see* MPEP § 2106.05(c); and
4. Applying or using the judicial exception in some other meaningful way beyond generally linking the use of the judicial exception to a particular technological environment, such that the claim as a whole is more than a drafting effort designed to monopolize the exception — *see* MPEP § 2106.05(e).

In contrast, limitations that are not indicative of “integration into a practical application” include:

1. Adding the words “apply it” (or an equivalent) with the judicial exception, or merely include instructions to implement an abstract idea on a computer, or merely uses a computer as a tool to perform an abstract idea — *see* MPEP § 2106.05(f);

2. Adding insignificant extra-solution activity to the judicial exception — *see* MPEP § 2106.05(g); and
3. Generally linking the use of the judicial exception to a particular technological environment or field of use — *see* MPEP § 2106.05(h).

See Guidance, 84 Fed. Reg. at 54–55 (“Prong Two”).

As shown above, most of the claim limitations in claim 31 recite abstract ideas. Additional to those abstract limitations, claim 31 recites that (a) various process steps are performed by “at least one computing device,” (b) the monitoring of interactions with a plurality of businesses involves “interactions by a plurality of first client devices with one or more network sites,” and (c) the marketing campaign is an “online” marketing campaign and the performance tracked is “network activity campaign performance.”

We conclude that these limitations are insufficient to integrate the recited judicial exception into a practical application. Each of these limitations merely recite the use of conventional computer technology to implement the otherwise abstract process on a computer network. It is well-established, however, that the use of generic technology to implement an abstract idea is insufficient to integrate it into a practical application. *See* MPEP 2106.05(f) (explaining that it is not indicative of integration into a practical application where the claims “merely include instructions to implement an abstract idea on a computer, or merely uses a computer as a tool to perform an abstract idea”). Accordingly, we conclude claim 31 is *directed to* a judicial exception.

The Inventive Concept – Step 2B

Having determined the claim is directed to a judicial exception, we proceed to evaluating whether the claim adds a specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field (*see* MPEP § 2106.05(d)) or simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception. *See* Guidance, 84 Fed. Reg. at 56.

Our review of the Examiner’s rejection under Step 2B is guided by the revised examination procedure published online by the USPTO on April 19, 2018, entitled “Changes in Examination Procedure Pertaining to Subject Matter Eligibility, Recent Subject Matter Eligibility Decision (*Berkheimer v. HP, Inc.*)” (“*Berkheimer Memorandum*”), which imposed a new fact finding requirement for Examiners applicable to rejections under § 101. Consistent with the *Berkheimer Memorandum*, we agree with the Examiner that the claim does not add specific limitations beyond what is well-understood, routine, and conventional.

Appellant argues the Examiner has failed to satisfy the *Berkheimer* requirements by failing to provide evidence that several limitations are not well-understood, routine, and conventional under § 101. Appeal Br. 19. We are not persuaded of Examiner error. Most of the claim limitations Appellant asserts are not well-understood, routine, and conventional, however, are themselves abstract. Appeal Br. 19–20 (asserting elements of claim 31 are not well-understood, routine, and conventional). In Step 2B, however, our analysis focuses on the *additional* elements—those beyond what is abstract. *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.”). Moreover, the Examiner provides the requisite evidence in the Examiner’s Answer, by citing cases discussed in MPEP § 2106.05(d) which show the well-understood, routine, and conventional nature of the computer functions recited in the claim. Ans. 7–8.

Appellant argues claim 31 provides an inventive concept as an ordered combination under the reasoning of *BASCOM* and *Amdocs* because it is “related to generating and adaptively updating keywords and categories that are optimized to generate traffic to a business’ web site and/or increase revenue for the business.” Appeal Br. 21–23. We are not persuaded by this argument. This alleged improvement is not an improvement to technology. Rather, the alleged improvement is an improvement in marketing—an improvement in the abstract idea itself. *SAP Am. Inc.*, 898 F.3d at 1168 (Fed. Cir. 2018) (“What is needed is an inventive concept in the non-abstract application realm.”).

Because the Examiner correctly concluded claim 31 is directed to a judicial exception, and because Appellant does not identify any error in the Examiner’s determination under step 2B of the Guidance, we sustain the rejection of representative claim 31 under 35 U.S.C. § 101, as well as of the remaining claims.

REJECTIONS UNDER 35 U.S.C. § 103

We reverse the rejections under § 103. Claim 31 recites the limitation:

generating, via the at least one computing device, a new online marketing campaign in response to a request from a new business, the request identifying the at least one business service

category and at least one new keyword that is not included in the list of keywords, the new online marketing campaign being based at least in part on the marketing campaign template including the list of keywords for the at least one business service category and the at least one new keyword, the at least one new keyword being provided by the new business via a particular client device.

Appeal Br. 44 (Claims Appendix). The Examiner finds Carver teaches this limitation. Final Act. 24 (citing Carver col. 14, l. 65–col. 15, l. 29; col. 4, ll. 32–47; Fig. 1).

Appellant argues Carver is deficient because Carver merely “discusses an operator’s ability to add and/or remove keywords from an ad cluster.” Appeal Br. 27. Appellant argues that nothing in Carver teaches any online marketing campaign generated “in response to a request from a new business” in which the request identifies “at least one business service category and at least one new keyword that is not included in the list of keywords.” Appeal Br. 27. We agree.

The cited portions of Carver make no mention of any request made by a new business to generate a new online marketing campaign. The cited portions generally describe that the system may analyze keyword groups to create smaller clusters having greater semantic similarity. *See, e.g.*, Carver col. 4, ll. 32–47; col. 15, ll. 1–29. However, these portions provide no indication that any new keyword is added to a list of keywords in response to a request made by a new business, as required by the claim.

Accordingly, we are persuaded the Examiner erred, and we reverse the rejection of claim 31 under 35 U.S.C. § 103(a). For the same reasons, we also reverse the rejections of independent claims 38, 45, and 51, each of

which recites similar limitations, as well as of the remaining claims which depend therefrom.⁴

CONCLUSION

Because we have affirmed at least one ground of rejection for each claim on appeal, we affirm the Examiner's decision to reject the claims.

37 C.F.R. § 41.50(a)(1).

More specifically,

We affirm the Examiner's decision to reject claims 31–57 under 35 U.S.C. § 101.

We reverse the Examiner's decision to reject claims 31–57 under 35 U.S.C. § 103.

DECISION SUMMARY

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
31–57	101	Eligibility	31–57	
31, 33, 34, 37	103	Carver, Collins, AAPA, Horowitz		31, 33, 34, 37
32, 35, 36	103	Carver, Collins, AAPA, Horowitz, White		32, 35, 36
38–41, 45, 46, 51–54	103	Carver, Collins		38–41, 45, 46, 51–54
42–44, 55–57	103	Carver, Collins, AAPA, Horowitz, White		42–44, 55–57

⁴ Because we find this argument persuasive and dispositive of the rejections made under § 103, we do not address Appellant's other § 103 arguments herein.

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47-50	103	Carver, Collins, AAPA, Horowitz		47-50
Overall Outcome			31-57	

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).

AFFIRMED