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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte KENNETH J. OUIMET

Appeal 2019-001910
Application 14/161,938
Technology Center 3600

Before ERIC B. CHEN, MICHAEL J. STRAUSS, and
MICHAEL M. BARRY, *Administrative Patent Judges*.

STRAUSS, *Administrative Patent Judge*.

DECISION ON APPEAL¹

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant² appeals from the Examiner's decision to reject claims 33–52. *See* Final Act. 1. We have jurisdiction under 35 U.S.C. § 6(b). We AFFIRM.

¹ We refer to the Specification, filed January 23, 2014 (“Spec.”); Final Office Action, mailed January 24, 2018 (“Final Act.”); Appeal Brief, filed July 18, 2018 (“Appeal Br.”); Examiner’s Answer, mailed November 2, 2018 (“Ans.”); and Reply Brief, filed January 2, 2019 (“Reply Br.”).

² We use the word Appellant to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as MYWORLD, INC. Appeal Br. 2.

Summary of the Disclosure

Appellant's claimed subject matter "relates in general to consumer purchasing and, more particularly, to a commerce system and method of controlling activity within the commerce system with a mapping data structure supporting an intelligent personal agent." Spec. ¶ 1.

Illustrative claim

Claim 33, reproduced below with element labels added in brackets, is illustrative of the claimed subject matter:

33. A method of controlling communication over an electronic network including a first computing system and a second computing system, comprising:

[(i)] providing a product database on the first computing system including product information corresponding to a plurality of products, wherein a user generates a weighted attribute for a portion of the products from the second computing system;

[(ii)] providing a recipe database on a third computing system in communication with the first computing system, wherein the recipe database includes ingredients for a recipe;

[(iii)] providing a mapping data structure on the first computing system to create a product set for each ingredient of the recipe by determining the products in the product database that match product attributes of the ingredients in the recipe;

[(iv)] transmitting a user request for the recipe from the second computing system to the first computing system;

[(v)] building a shopping list from the product sets using the first computing system based on the weighted attribute of the products, wherein the mapping data structure enhances the operation between the first computing system and second computing system by creating the product set in order to build the shopping list from the weighted attributes of the products; and

[(vi)] transmitting the shopping list to the second computing system for presentation on a display screen.

REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Geller et al.	US 6,236,990 B1	May 22, 2001
Moss et al.	US 2005/0160014 A1	July 21, 2005
Harlan	US 2009/0144081 A1	June 4, 2009
Kolawa et al.	US 8,504,440 B1	Aug. 6, 2013

REJECTIONS

Claims 33–52 stand rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. Final Act. 3–7.

Claims 33–52 are rejected under 35 U.S.C. § 103 as being unpatentable over Moss, Geller, Kolawa and Harlan. Final Act. 8–22.

STANDARD OF REVIEW

The Board undertakes a limited *de novo* review of the appealed rejections for error based upon the issues identified by Appellant, and in light of the arguments and evidence produced thereon. *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential); *see also* 37 C.F.R. § 41.37(c)(1)(iv).

OPINION

We are not persuaded the Examiner erred in rejecting the argued claims under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter and under § 103 over Moss, Geller, Kolawa and Harlan. Instead, we agree with and adopt the Examiner’s findings and reasoning in the Final Office Action and the Answer as our own and add any additional findings of fact appearing below for emphasis.

Rejection under 35 U.S.C. § 101

I. Principles of Law

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 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 Supreme Court’s two-step framework, described in *Mayo* and *Alice*. *Id.* at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus 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 id.* 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, 67–68 (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

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India rubber, smelting ores” (*id.* at 182 n.7 (quoting *Corning v. Burden*, 56 U.S. 252, 267–68 (1854))); and manufacturing flour (*Benson*, 409 U.S. at 69 (citing *Cochrane v. Deener*, 94 U.S. 780, 785 (1876))).

If the claim is “directed to” an abstract idea, we turn to the second step of the *Alice* and *Mayo* framework, where “we must examine the elements of the claim to determine whether it contains an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Alice*, 573 U.S. at 221. “A claim that recites an abstract idea must include ‘additional features’ to ensure ‘that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].’” *Id.* (alterations in original) (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 USPTO published revised guidance on the application of § 101 (“Guidance”). *See, e.g.*, USPTO, *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019) (“2019 Revised Guidance”); USPTO, *October 2019 Update: Subject Matter Eligibility* (“Update”), 84 Fed. Reg. 55942 (Oct. 18, 2019) .

Under the 2019 Revised 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 activities 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) (9th ed. Rev. 08.2017, Jan. 2018)).

See 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 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 2019 Revised Guidance, 84 Fed. Reg. at 56.

II. Examiner’s Determinations

The Examiner determines “[t]he claims are directed to the abstract idea of selecting products for a consumer based on consumer preferences, which is a fundamental economic practice and/or an idea of itself and/or a method of organizing human activities normally performed by personal shoppers.” Final Act. 3. The Examiner explains:

Selecting products for a consumer is a longstanding commercial practice and/or method of organizing human activities from the pre-internet world and the claims merely recite the performance of this business practice with the requirement to perform it with generic computer hardware, the internet, and a generically functioning database containing product information. The abstract idea in the pending application is directed to a concept relating to commerce such as business relations, an idea standing

alone such as an uninstanitated concept, plan, or scheme,^[3] and/or a concept related to interpersonal and intrapersonal activities, such as managing relationships or transactions between people, social activities, advertising, marketing, and sales activities or behaviors.

Id. at 3–4. The Examiner further determines the rejected claims are “similar to other concepts that have been identified as abstract by the court . . . as seen in [multiple cases⁴].” *Id.* at 4–5. The Examiner further determines

³ Although the previously recognized category of an idea of itself is not one of the currently recognized categories, it is sufficient for the purposes of the present appeal that the claimed concepts reasonably can be characterized as falling within the still-recognized category of mental processes. *See, e.g.*, MPEP § 2106.04(a)(2)(III):

The courts have used the phrase “an idea ‘of itself’” to describe an idea standing alone such as an uninstanitated concept, plan or scheme, as well as a mental process (thinking) that “can be performed in the human mind, or by a human using a pen and paper.” *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1372 . . . (Fed. Cir. 2011).

Characterizing the abstract idea as a mental process instead of an idea standing alone (i.e., an idea of itself) does not constitute a change to the thrust in the Examiner’s rejection.

⁴ According to the Examiner, the claimed concept is similar to obtaining and comparing intangible data as seen in *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366 (Fed. Cir. 2011), collecting and comparing known information as seen in *Classen Immunotherapies Inc. v. Biogen IDEC*, 659 F.3d 1057 (Fed. Cir. 2011), data recognition and storage as seen in *Content Extraction and Transmission LLC v. Wells Fargo Bank, N.A.*, 776 F.3d 1343 (Fed. Cir. 2014), creating an index and using that index to search for and retrieve data as seen in *Intellectual Ventures I LLC v. Erie Indemnity Co.* 850 F.3d 1315 (Fed. Cir. 2017), collecting information, analyzing it, and displaying certain results of the collection and analysis as seen in *Electric Power Group, LLC, v. Alstom*, 830 F.3d 1350 (Fed. Cir. 2016), offer-based price

each of the recited steps (i) through (vi) recite concepts that are similar to price optimization involving information collection, processing, and display of results that address a business challenge, i.e., product selection. *Id.* at 5.⁵

The Examiner further determines the claims are directed to solving a business challenge, not one particular to either the internet or computer networks. *Id.* According to the Examiner:

optimization as seen in *OIP Technologies, Inc. v. Amazon.com, Inc.*, 788 F.3d 1359 (Fed. Cir. 2015), budgeting [and] . . . tailoring content based on information about the user as seen in *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 793 F.3d 1363 (Fed. Cir. 2015), generating menus on a computer as seen in *Apple v. Ameranth*, 842 F.3d 1229 (Fed. Cir. 2016), and delivering selected advertising or promotional content to devices as seen in *Affinity Labs of Texas, LLC v. Amazon.com Inc.*, 838 F.3d 1266 (Fed. Cir. 2016).

Final Act. 4–5 (citations altered).

⁵ According to the Examiner:

The “providing a product database”, “providing a recipe database”, and “providing a mapping data structure” limitations are especially similar to creating an index and using that index to search for and retrieve data as seen in *Intellectual Ventures I LLC v. Erie Indemnity Co.* The “transmitting a user request”, “selecting a product from the product list for the shopping list based on closest match to the weighted attribute of the products”, “building a shopping list”, “transmitting the shopping list”, and “generating . . . and presenting the individualized offer” limitations are especially similar to offer-based price optimization as seen in *OIP Technologies, Inc. v. Amazon.com, Inc.*, collecting information, analyzing it, and displaying certain results of the collection and analysis as seen in *Electric Power Group, LLC, v. Alstom*, tailoring content based on information about the user as seen in *Intellectual Ventures I LLC v. Capital One Bank (USA)*, and delivering selected content to devices as seen in *Affinity Labs of Texas, LLC v. Amazon.com*.

Final Act. 4–5.

The claims do not appear to be applying any of these consumer product selection/recommendation practices any differently than previous longstanding commercial usage, other than applying them to generic computer hardware, the internet, and a generically functioning database containing product information. Selecting products for a consumer is not a problem specifically arising in the realm of computer networks and is also not necessarily rooted in computer technology. The claims as a whole, considering all claim elements both individually and in combination, do not amount to significantly more than an abstract idea.

Id. Furthermore, according to the Examiner, “[t]he limitations are all well-understood, routine, and conventional [(i.e., “WURC”)] in the field of consumer product selection/recommendation.” *Id.* at 5–6. The Examiner continues, explaining why each of the additional elements, notably including the claimed mapping data structure, are generic and provide only basic and routine functionalities. *Id.*

III. Appellant’s Contentions of Error

Appellant contends “the solution of claim 33 is indeed from a problem specifically arising in the realm of computer networks and computer technology.” Appeal Br. 8. Appellant argues menu planning and shopping has transitioned from in-person visits to a local market to the use of computer technology thereby presenting a problem of processing large amounts of data. *Id.* To address this problem, Appellant argues

The feature of the mapping data structure on the first computing system creating a product set for each ingredient of the recipe by determining the products in the product database that match product attributes of the ingredients in the recipe is part of what makes the claim as a whole recite statutory subject matter.

Id. at 9. According to Appellant, “a mapping data structure simplifies the user request for the recipe by efficiently and effectively identifying the

product set to fill the recipe and then builds the shopping list from the weighted attributes of the products” and thereby “saves network traffic, communication load, and time by eliminating unnecessary searching.” *Id.* at 10. Appellant presents similar arguments in connection with independent claim 39 (*id.* at 12–16) and independent claim 46 (*id.* at 16–21).

IV. Examiner’s Answer

The Examiner responds, explaining he “considered all claim elements both individually and in combination, and determined that the claims are directed to the abstract idea of selecting products for a consumer based on consumer preferences.” Ans. 4. Responding to Appellant’s contention that the claims solve a problem arising in the realm of computer networks and computer technology, the Examiner finds as follows:

[T]he claimed method does not contain any language for actually controlling the technical functionalities for electronic network communication. The claims merely utilize an electronic network communication environment or field of use to implement the claimed abstract idea. The claimed mapping data structure is an index for obtaining and comparing intangible data related to selection of products and recipes. It is analogous to the human activity of tracking/organizing information, in that an entity uses the data structure to merely find out what information is correlated with another type of information (*e.g.* what pages of a book can I find information related to this keyword). The mapping data structure index merely takes one type of data (recipe ingredient) and informs what other types of data (products) correlate to this data. . . . There is no indication of any inventive concept related to the technical manner in which this claimed data structure electronically communicates with the claimed databases. The claims indicate that the mapping data structure is merely provided, rather than created. The claimed computer networks and computer technology are performing well understood, routine, and conventional operations of

receiving or transmitting data over a network, *e.g.*, using the Internet to gather data.

Id. at 6–7.

V. Step 2A, Prong One (Judicial Exception)

Under Prong 1 of the 2019 Revised Guidance, we determine whether the claim recites a recognized judicial exception. We agree with the Examiner that the claim elements are similar to those determined to recite abstract concepts in *Digitech*, *Electric Power Group*, and *Benson*. Ans. 3.

Element (i) of claim 33 recites, in part, “providing a product database . . . including product information corresponding to a plurality of products, wherein a user generates a weighted attribute for a portion of the products” Appellant discloses “Consumer service provider 52 maintains product database 56 with up-to-date, comprehensive, reliable, and objective retailer product information. The product information includes the product description, product attributes, regular retail pricing, and discounted offers.” Spec. ¶ 40. Appellant’s Specification further describes “[t]he product information in product database 56 is organized into product families based on similarity or commonality of brand, price, size, and related product attributes.” Spec. ¶ 42. Furthermore, “Product database 56 contains the name, type, description, and location of retailers nationwide” (Spec. ¶ 55), shopping lists (Spec. ¶ 84), consumer requirements (Spec. ¶ 89), consumer preferences (Spec. ¶ 90), and item attributes and weighting factors (Spec. ¶ 103). Thus, other than identifying types of information stored, we are unable to ascertain, and Appellant does not identify, a particular structure of the product database.

Businesses involved in the provision of goods typically maintain information about the goods offered to sale. For example, in the case of

limited product lines, a sales person may recall information about products or may be aided with pen and paper in recording product details (*e.g.*, provide or use a catalog of products for sale). Thus, provision of the database required by claim element (i) is reasonably interpreted as reciting an advertising, marketing or sales activity or behavior that is a type of commercial interaction identified in the 2019 Revised Guidance as one of certain methods of organizing human activity. *See* 2019 Revised Guidance, 84 Fed. Reg. at 52.

Furthermore, claim element (i) involves recalling information and is a process that can be performed in the human mind or with the aid of pen and paper. The 2019 Revised Guidance recognizes certain methods of organizing human activity (*e.g.*, advertising, marketing or sale activities or behaviors) and mental processes (*e.g.*, concepts performed in the human mind) as constituting abstract ideas. 2019 Revised Guidance, 84 Fed. Reg. at 52.

Element (ii) of claim 33 recites, in part, “providing a recipe database . . . wherein the recipe database includes ingredients for a recipe.” Appellant discloses “Recipe database 58 stores information about each recipe such as a title, brief description, allergy information, nutritional information, number of servings, serving size, consumer rating, ingredient list, photograph, cooking instructions, community rating, notes, contributor, and other information.” Spec. ¶ 68. Businesses (*e.g.*, food manufacturers, restaurants, cookbook publishers) maintain recipe databases in preparing food products and informing consumers of ways to use food ingredients that are for sale. That is, vendors and as well as related businesses (*e.g.*, cookbook publishers) maintain and provide instructions for combining and assembling

components into intermediate or final products. Thus, provision of the database required by claim element (ii) is reasonably interpreted as reciting an advertising, marketing or sales activity or behavior that is a type of commercial or legal interaction and a certain method of organizing human activity.

Furthermore, claim element (ii) involves recalling information and, therefore, is a process that can be performed in the human mind or with the aid of pen and paper. The 2019 Revised Guidance recognizes certain methods of organizing human activity (*e.g.*, advertising, marketing or sale activities or behaviors) and mental processes (*e.g.*, concepts performed in the human mind) as constituting abstract ideas. 2019 Revised Guidance, 84 Fed. Reg. at 52.

Element (iii) of claim 33 recites, in part, “providing a mapping data structure . . . to create a product set for each ingredient of the recipe by determining the products in the product database that match product attributes of the ingredients in the recipe.” Appellant directs attention to paragraph 90 of the Specification and Figure 22 of the drawings for disclosing a mapping data structure. Appeal Br. 3. However, the indicated portion of the Specification does not reference a mapping data structure and the drawings, including the indicated Figure 22, only depict a box 114 labeled as a Mapping Data Structure without providing any details. Instead of structure, (*e.g.*, a configuration or arrangement defining how data is organized) we find Appellant discloses a mapping data structure in terms of functionalities provided. For example,

FIG. 11a shows mapping data structure 114. Consumer service provider 52 provides mapping data structure 114 for determining a specific set of products 116 interchangeable with item 112 on

list 73. . . . Mapping data structure 114 accesses product database 56, maintained by consumer service provider 52. Mapping data structure 114 retrieves product information for all varieties of item 112. Mapping data structure 114 uses the product attributes stored in product database 56, maintained by consumer service provider 52, to evaluate whether a given product 18 possesses the desired item attributes 118 and should be placed in product set 116 corresponding to item 112.

Spec. ¶ 44. We do not find any description of a mapping data structure consistent with common definitions of data structures including “[a]n organizational scheme, such as a record or array, that can be applied to data to facilitate interpreting the data or performing operations on it.”

MICROSOFT COMPUTER DICTIONARY 144 (5th ed. 2002). Rather than describe an organizational scheme for data, Appellant discloses only functionalities. Therefore, consistent with the Specification and in the absence of any disclosure of specific structure (*e.g.*, records, arrays, tables, lists), we interpret the recited mapping data structure as the capability to perform the recited functions and steps. Because it is unnecessary in reaching our final decision, we do not consider whether the disputed mapping data structure should be interpreted under 35 U.S.C. § 112(f) as a means plus function limitation and, if so, whether such a limitation is properly supported by the Specification.⁶

Considering the actions to be performed according to claim element (iii), creating a product set is disclosed as “determining a specific set of

⁶ We note, in what we consider a related appeal of Appellant, the data structure claimed in that application was determined to lack sufficient written description support under 35 U.S.C. § 112(a). *Ex Parte Kenneth J. Ouimet*, No. APPEAL 2019-005881, 2020 WL 2060531, at *6 (P.T.A.B. Apr. 22, 2020)

products 116 interchangeable with item 112 on [shopping] list 73.” Spec.

¶ 44. Examples of product attributes are disclosed to include “brand, size, price, ingredient, or additive.” Spec. ¶ 42.

Businesses, such as food distributors and grocery stores, maintain information about available products to include one or more of the disclosed product attributes (*e.g.*, price). For example, retail businesses maintain catalogs describing products for sale from various manufacturers and grocery stores advertise for products for sale. Thus, creation of a product set as required by claim element (iii) is reasonably interpreted as reciting an advertising, marketing or sales activity or behavior that is a type of commercial or legal interaction and a certain method of organizing human activity.

Furthermore, claim element (iii) involves recalling information and is a process that can be performed in the human mind or with the aid of pen and paper. The 2019 Revised Guidance recognizes certain methods of organizing human activity (*e.g.*, advertising, marketing or sale activities or behaviors) and mental processes (*e.g.*, concepts performed in the human mind) as constituting abstract ideas. 2019 Revised Guidance, 84 Fed. Reg. at 52.

Element (iv) of claim 33 recites, in part, “transmitting a user request for the recipe” Appellant directs attention to paragraph 97 of the Specification as describing this transmitting element. Appeal Br. 4. The referenced portion of the Specification describes providing access to a website for accessing a recipe, using a corresponding link to the recipe page, browsing a recipe database, or providing an intelligent personal agent to assist a user in identifying a recipe. Spec. ¶ 97. Thus, a broad but

reasonable interpretation of transmitting a user request includes allowing a user to access information such as a recipe.

Providing information about how products can be used, such as supplying recipe suggestions using products marketed by a business (*e.g.*, food ingredients), is reasonably interpreted as an advertising, marketing or sales activity or behavior that is a type of commercial interaction and a certain method of organizing human activity. *See Two-Way Media Ltd. v. Comcast Cable Commc'ns, LLC*, 874 F.3d 1329, 1337 (2017) (“The claim requires the functional results of . . . ‘routing,’ . . . but does not sufficiently describe how to achieve these results in a non-abstract way”).

Furthermore, claim element (iv) involves allowing a user to access selected information and is a process that reasonably can be performed in the human mind or with the aid of pen and paper, *e.g.*, an observation. The 2019 Revised Guidance recognizes certain methods of organizing human activity (*e.g.*, advertising, marketing or sale activities or behaviors) and mental processes (*e.g.*, concepts performed in the human mind) as constituting abstract ideas. 2019 Revised Guidance, 84 Fed. Reg. at 52.

Element (v) of claim 33 recites, in part, “building a shopping list from the product sets . . . based on the weighted attribute of the products, . . . by creating the product set in order to build the shopping list from the weighted attributes of the products.” Appellant directs attention to paragraph 91 of the Specification as describing this claim element. Appeal Br. 4. The referenced portion of the Specification describes “shopping list 110 includes products 410-414 from product sets 116 corresponding to ingredients 402-406 imported from recipe 292, *i.e.*, graham crackers, chocolate bars, and marshmallows.” Spec. ¶ 91. Manufacturers, supplies and other businesses

(*e.g.*, cookbook publishers) are known to provide instructions for assembling an item, such as a food product (*e.g.*, recipes found in cookbooks) including providing lists of constituent components or ingredients, those lists reasonably considered shopping lists. Providing information about how products can be used, such as providing recipe suggestions, including suggested products (*e.g.*, brands, sizes), is reasonably interpreted as an advertising, marketing or sales activity or behavior that is a type of commercial interaction and a certain method of organizing human activity.

Furthermore, claim element (v) involves organizing information (*e.g.*, collecting into a set (*e.g.* a list) items for purchase) that can be performed in the human mind or with the aid of pen and paper. The 2019 Revised Guidance recognizes certain methods of organizing human activity (*e.g.*, advertising, marketing or sales activities or behaviors) and mental processes (*e.g.*, concepts performed in the human mind) as constituting abstract ideas. 2019 Revised Guidance, 84 Fed. Reg. at 52.

Element (vi) of claim 33 recites, in part, “transmitting the shopping list” Appellant directs attention to paragraph 93 of the Specification and Figure 23 of the drawings as describing claim 33’s transmitting element (vi). Appeal Br. 4. However, rather than describing transmitting a shopping list, the indicated portions of the application disclose providing a user with recipes. Thus, a broad but reasonable interpretation of claim element (vi) includes transmission of recipe or product information. Accordingly, the analysis of claim element (vi) is similar to that of claim element (iv) reciting a user recipe request. In particular, providing a consumer with suggested products for purchase is reasonably interpreted as an advertising, marketing

or sales activity or behavior that is a type of commercial interaction and a certain method of organizing human activity.

Furthermore, claim element (vi) involves the transmission of information that can be performed in the human mind (*e.g.*, an observation) or with the aid of pen and paper. The 2019 Revised Guidance recognizes certain methods of organizing human activity (*e.g.*, advertising, marketing or sales activities or behaviors) and mental processes (*e.g.*, concepts performed in the human mind) as constituting abstract ideas. 2019 Revised Guidance, 84 Fed. Reg. at 52. *See Two-Way Media Ltd.* 874 F.3d at 1337 (generalized routing of information is abstract). Furthermore, as is discussed below in connection with Prong 2 of our analysis, transmission of information (including its display) is reasonably interpreted as insignificant extra-resolution activity.

For the reasons discussed above, we determine claim 33 recites subject matter reasonably characterized as certain methods of organizing human activity (*i.e.*, commercial or legal interactions including advertising, marketing, or sales activities or behaviors) and mental processes (*i.e.*, concepts performed in the human mind or with pen and paper), which are identified in the 2019 Revised Guidance as abstract ideas. *See* 2019 Revised Guidance, 84 Fed. Reg. at 52.

Contrary to Appellant's contention, we are not persuaded the Examiner's characterization of the claims is an over-generalization. Appeal Br. 7. Our reviewing court recognizes "[a]n abstract idea can generally be described at different levels of abstraction." *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d at 1240. That need not and, in this case does not, "impact the patentability analysis." *Id.* at 1241. Further, "[a]n abstract idea can

generally be described at different levels of abstraction. . . . The Board’s slight revision of its abstract idea analysis does not impact the patentability analysis.” *Id.* Moreover, merely combining several abstract ideas does not render the combination any less abstract. *RecogniCorp, LLC v. Nintendo Co.*, 855 F.3d 1322, 1327 (Fed. Cir. 2017) (“Adding one abstract idea (math) to another abstract idea . . . does not render the claim non-abstract.”); *see also FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093–94 (Fed. Cir. 2016) (determining the pending claims were directed to a combination of abstract ideas). Thus, the patentability analysis in this Appeal does not turn on exactly how various limitations are characterized as being abstract, i.e., as either an abstract “mental processes,” or “certain methods of organizing human activity.”

III. Step 2A, Prong 2 (Integration into a Practical Application)

Under Step 2A, Prong 2, of the 2019 Revised Guidance, we determine whether any of the additional elements beyond the abstract idea integrate the abstract ideas into a practical application. 2019 Revised Guidance, 84 Fed. Reg. at 54. The 2019 Revised Guidance provides exemplary considerations that are indicative of an additional element or combination of elements integrating the judicial exception into a practical application, such as an additional element reflecting an improvement in the functioning of a computer or an improvement to other technology or technical field. *Id.* at 55; *see also* MPEP § 2106.05(a).

In addition to the actions recited by elements (i) through (vi), claim 33 requires first, second, and third computing systems, product and recipe databases, a mapping data structure, and display screen. We address the mapping data structure above under Prong 1, interpreting this claim element

to include function without defining structure and determining the recited functions reasonably correspond to concepts that are certain methods of organizing human activity and mental processes, both of which are identified as abstract ideas. Thus, effectively, the recited mapping data structure is not an additional element that need be analyzed under Prong 2. Even if otherwise, at most, the recited mapping data structure is part of a computer implementation of the underlying concept of organizing human activity and concepts performed in the human mind rather than constituting an improvement in the functioning of a computer or an improvement to other technology or technical field. *See* 2019 Revised Guidance, 84 Fed. Reg. at 55; MPEP § 2106.05(a).

Addressing the additional elements recited by the claims as identified by the Examiner (Final Act. 5–7), we agree these elements, considered both individually and as an ordered combination, fail to integrate the recited abstract concepts of claim 33 into a practical application within the meaning of the 2019 Revised Guidance. In particular, we agree:

Providing databases in communication, providing a mapping data structure, transmitting data for analysis and display, communicating between a database and a system for access, and generating a hyperlink for a data request are all generic and routine functions of computers and electronic communication systems that applicant has merely recited with the application of the selecting products for a consumer based on consumer preferences abstract idea. The “communication over an electronic network”, “computing system”, “database”, “mapping data structure”, “electronic communication”, “hyperlink”, “display screen”, and “non[-]transitory, tangible computer readable medium storing instructions for controlling communication over an electronic network” are generic computer structures that have been recited to perform their basic functions of storing, retrieving, displaying, and processing data

through the program that enables the consumer product selection/recommendation. The recitation of the computer limitations amounts to mere instructions to implement the abstract idea on a computer. Taking the additional elements individually and in combination, the computer components at each step of the process perform purely generic computer functions.

Final Act. 7. For example, Appellant discloses the computer systems as general-purpose computers and, in the case of the third computer system, alternatively as a cell phone or tablet. Spec. ¶ 31. In connection with the databases, Appellant directs attention to paragraph 44 (product database 56) and paragraphs 28, 71–73 (recipe database 58). Appeal Br. 4. However, the indicated portions of the Specification merely describe the types of information stored rather than providing structure or operational details. Likewise, the other additional elements identified by the Examiner are described at a high level of generality. Consistent with the 2019 Revised Guidance, these additional elements are insufficient to integrate the recited abstract idea(s) into a practical application of the judicial exception, as they merely amount to instructions to implement an abstract idea on a computer, or, in other words, the claim merely uses a computer as a tool to perform an abstract idea. 2019 Revised Guidance, 84 Fed. Reg. at 54. *See also Alice*, 573 U.S. at 221 (“[M]erely requir[ing] generic computer implementation[] fail[s] to transform that abstract idea into a patent-eligible invention.”); MPEP § 2106.05(f)(2) (“Use of a computer or other machinery in its ordinary capacity for economic or other tasks (*e.g.*, to receive, store, or transmit data) or simply adding a general purpose computer or computer components after the fact to an abstract idea (*e.g.*, a fundamental economic practice or mathematical equation) does not provide significantly more.”).

In addition to the actions required by claim elements (i) through (vi) reciting concepts identified as abstract ideas, claim element (vi) recites transmitting the shopping list to the second computing system for presentation on a display screen. Such activity reasonably can be characterized as extra-solution activity. Thus, this element does not add any meaningful limitations to the noted abstract ideas as merely being directed to the insignificant post-solution activity of transmitting data. *See, e.g., Apple, Inc. v. Ameranth, Inc.*, 842 F.3d at 1241–42 (holding that printing or downloading generated menus constituted insignificant extra-solution activity).

Appellant’s argument that the recited mapping data structure renders the claims patent-eligible (Appeal Br. 9) is unpersuasive for the reasons discussed above under Prong 1. In particular, the mapping data structure is described only as functions or actions that are part of the underlying abstract concept rather than an element in addition to that concept. In any case, the mapping data structure is, at most, described at a high level of generality that does not improve the functioning of the implementing platform (*e.g.*, computing systems) or supporting technology (*e.g.*, communication methods and networks).

We are unpersuaded by Appellant’s argument the mapping data structure simplifies the user request and improves network and computing utilization. Appeal Br. 10–11. As an initial matter, Appellant’s contentions are not supported by sufficient evidence or reasoning. Mere attorney argument and conclusory statements, which are unsupported by factual evidence, and are entitled to little probative value. *In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997); *In re De Blauwe*, 736 F.2d 699, 705 (Fed. Cir.

1984). Attorney argument is not evidence. *In re Pearson*, 494 F.2d 1399, 1405 (CCPA 1974). Nor can such argument take the place of evidence lacking in the record.

Furthermore, even if shown to result directly from the claimed method, the alleged improvements (i.e., simplified user requests and improved network and computer utilization) are due to the underlying abstract concept of identifying specific products satisfying user and recipe requirements, not to the additional elements. Likewise, any efficiencies that might result in “sav[ing] network traffic, communication load, and time by eliminating unnecessary searching” (Appeal Br. 11) are also due to the underlying abstract concept rather than the additional elements.

We are also unpersuaded the claims address “a problem specifically arising in the realm of computer networks and computer technology.” Appeal Br. 8. Appellant fails to identify a computer network or technology problem addressed by the claims other than to contend an overall improvement in system operation because user requests are alleged to be processed more efficiently. Although the preamble of claim 33 nominally recites “[a] method of controlling communication over an electronic network,” the body of the claim neither recites a network nor any network control functionality. At most, the claim recites that the first and third computing systems are in communication with each other and transmission of a user request and a shopping lists on unspecified media or connections.

We are also unpersuaded the claims are directed to “the realm of computer networks and computer technology” because, as alleged by Appellant, there is “[s]imply too much unorganized information for a human to simultaneously process.” Appeal Br. 14. As an initial matter, in the

absence of claim language reciting a particular amount of information (i.e., an amount considered too large to be processed in the human mind), such argument is not commensurate in scope with the claim. Thus, the claim encompasses, at least, a database with a single recipe having two or more ingredients (i.e., plural ingredients) and a product databased having two or more (i.e., a plurality) of products. Accordingly, at least in the degenerative case and similar cases involving limited sets of information, we disagree a human could not perform the information processing recited by claim 33 in his or her mind. Even for larger amounts of information, a person aided with pen and paper could perform the recited steps.

Contrary to Appellant's contention and as discussed above, any improvement in processing a user request is due to the underlying abstract concepts identified above, not to any additional elements. That the claimed method may result in faster and more accurate identifications of products to be included in a shopping list does not take the claim out of the realm of the abstract. "[R]elying on a computer to perform routine tasks more quickly or more accurately is insufficient to render a claim patent eligible." *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015); *see also Intellectual Ventures I LLC v. Erie Indemnity Co.*, 711 F. App'x 1012, 1017 (Fed. Cir. 2017) (unpublished) ("Though the claims purport to accelerate the process of finding errant files and to reduce error, we have held that speed and accuracy increases stemming from the ordinary capabilities of a general-purpose computer 'do[] not materially alter the patent eligibility of the claimed subject matter.'"); *see also Bancorp Servs., L.L.C. v. Sun Life Assurance Co. of Can. (U.S.)*, 687 F.3d 1266, 1278 (Fed. Cir. 2012) ("[T]he fact that the required calculations could be performed

more efficiently via a computer does not materially alter the patent eligibility of the claimed subject matter.”).

Appellant’s argument in connection with independent claims 39 and 46 are substantively similar to those presented and addressed above in connection with independent claim 33. Accordingly, for the reasons outlined above, we determine that independent claim 33 and, similarly, independent claims 39 and 46, recite certain methods of organizing human activity (*e.g.*, advertising, marketing or sale activities or behaviors) and mental processes (*e.g.*, concepts performed in the human mind), *i.e.*, an abstract idea, and that the additional elements recited in the claims are no more than generic components used as tools to perform the recited abstract idea. As such, the additional elements do not integrate the abstract idea into a practical application. *See Alice*, 573 U.S. at 223–24 (“Wholly generic computer implementation is not generally the sort of ‘additional featur[e]’ that provides any ‘practical assurance that the process is more than a drafting effort designed to monopolize the [abstract idea] itself.’” (brackets in original; quoting *Mayo*, 566 U.S. at 77)). Accordingly, we agree with the Examiner that the independent claims are directed to an abstract idea.

Step 2B

As noted above, the only claim elements beyond the recited abstract idea are the computing systems, recipe and product databases, mapping data structure, and display screen. The Examiner finds:

The additional elements or combination of elements in the claims other than the abstract idea *per se* amount to no more than: mere instructions to implement the idea on a computer, and recitation of generic computer structure that serves to perform generic computer functions that are well-understood, routine, and

conventional activities previously known to the pertinent industry.

Final Act. 5.

We agree with the Examiner. The claimed computer functions of the additional elements (such as computer systems, databases, and non-transitory computer readable medium) and their associated functions are well-understood, routine, and conventional. In particular, 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 I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1371 (Fed. Cir. 2015). This is because “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); *see also buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014) (it is well-understood, routine and conventional use of a computer to receive and send information over a network); *Intellectual Ventures I LLC v. Erie Indem. Co.*, 850 F.3d 1315, 1329 (Fed. Cir. 2017) (explaining that receiving a request to execute a database search and delivering records are routine computer functions that can only be described as generic or conventional); *Prism Techs. LLC v. T-Mobile USA, Inc.*, 696 F. App'x 1014, 1016–17 (Fed. Cir. 2017) (describing the claimed “authentication server,” “access server,” “Internet Protocol network,” “client computer device,” and “database” as “indisputably generic computer components”).

Appellant’s failure to provide details about the structure and functioning of the additional elements further evidences they are well-

understood, routine, and convention. *See* USPTO, Memorandum on Changes in Examination Procedure Pertaining to Subject Matter Eligibility, Recent Subject Matter Eligibility Decision (Berkheimer v. HP, Inc.) at 3 (Apr. 19, 2018), available at <https://www.uspto.gov/sites/default/files/documents/memo-berkheimer-20180419.PDF> (explaining that a specification that describes additional elements “in a manner that indicates that the additional elements are sufficiently well-known that the specification does not need to describe the particulars of such additional elements to satisfy 35 U.S.C. § 112(a)” can show that the elements are well understood, routine, and conventional); *Intellectual Ventures I*, 850 F.3d at 1331 (“The claimed mobile interface is so lacking in implementation details that it amounts to merely a generic component (software, hardware, or firmware) that permits the performance of the abstract idea, i.e., to retrieve the user-specific resources.”).

For these reasons, we determine the independent claims do not recite additional elements that, either individually or as an ordered combination, amount to significantly more than the judicial exception within the meaning of the 2019 Revised Guidance. 84 Fed. Reg. at 52–55; MPEP § 2106.05(d).

Conclusion

Appellant has not persuaded us that the Examiner erred in determining that independent claims 33, 39, and 46 recite one or more abstract ideas, that the claims fail to integrate the abstract idea into a practical application, or that the additional claim elements add significantly more to the abstract idea. Accordingly, Appellant does not persuade us of that the Examiner erred in concluding that claims 33, 39, and 46 are directed to patent-ineligible subject matter.

Therefore, we sustain the rejection of independent claims 33, 39, and 46 under 35 U.S.C. § 101. We also affirm this rejection of claims 34–38, 40–45, and 47–52, which Appellant does not argue separately with particularity.

Rejection under 35 U.S.C. § 103

I. Principles of Law

An invention is not patentable under 35 U.S.C. § 103 “if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” The question of obviousness is resolved on the basis of underlying factual determinations including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of skill in the art; and, (4) where in evidence, so-called secondary considerations, including commercial success, long-felt but unsolved needs, and failure of others. *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

When evaluating a combination of teachings, we must also “determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (citing *In re Kahn*, 441, F.3d 977, 988 (Fed. Cir. 2006)). Whether a combination of elements produced a predictable result weighs in the ultimate determination of obviousness. *KSR*, 550 U.S. at 416–17.

II. Examiner’s Rejection

The Examiner finds the combination of Moss, Geller, Kolawa, and Harlan teaches or suggests the subject matter recited by the pending claims. Final Act. 8. In particular, the Examiner finds Moss teaches providing a product database and mapping data structure on a first computing system (claim elements (i) and (iii)); providing a database on a third computing system (claim element (ii)); transmitting a recipe request to the first computing system (claim element (iv)); building a shopping list using the first computing system (claim element (v)); and transmitting the shopping list to a second computing system (claim element (vi)). *Id.* at 8–10. The Examiner applies Geller for teaching a *weighted* attribute and applies Harlan and Kolawa for a recipe database, transmitting a request for a recipe, and creating a product set for recipe ingredients. *Id.* at 10. According to the Examiner, “it would have been obvious to one of ordinary skill in the art at the time of filing to combine the product recommendation methods of Moss, Geller, Kolawa, and Harlan in order to specify effective methods for recommending products to consumers based on their preferences.” *Id.*

III. Appellant’s Contentions of Error

According to Appellant, the rejection of independent claim 33 is improper because “neither [Harland nor Kolawa] discloses providing a mapping data structure on the first computing system to create a product set for each ingredient of the recipe by determining the products in the product database that match product attributes of the ingredients in the recipe,” i.e., claim element (iii). Appeal Br. 26. In connection with dependent claim 34, Appellant further contends the prior art fails to compare products from a product list that was created by a mapping data structure as recited by the claim because “Geller does not have the mapping data structure on the first

computing system to create a product set for each ingredient of the recipe by determining the products in the product database that match product attributes of the ingredients in the recipe.” *Id.* at 27. Appellant contends corresponding errors in the rejection of independent claims 39 and 46 and their respective dependent claims 40 and 47. *Id.* at 28–38.

IV. Examiner’s Answer

The Examiner responds that the rejection is based on the combination of references, not any one reference standing alone. Ans. 8. The Examiner disputes Appellant’s contention that Moss fails to teach providing a mapping data structure on the first computing system to create a product set for each ingredients by determining the products in the product database that match product attributes of the ingredients. *Id.* at 9. According to the Examiner, the limitation is taught by Moss’s disclosure of “uniquely mapping a product into a database based on distinguishing characteristics (product attributes)” as disclosed at paragraphs 248 and depicted in Figure 21 with additional functionalities disclosed at paragraphs 271–272 and Figure 26 of the reference. *Id.* Based on these disclosures, the Examiner finds “Moss teaches a user selecting a product attribute for each product on a potential shopping list, and receiving a product set for each product of the list based on matching products in the product database mapped data structure that match the user selected product attribute.” *Id.* at 10. The Examiner explains that “[alt]hough Moss does not teach that these listed products/ingredients can be part of a recipe list, . . . the Harlan and Kolawa references teach that these listed products/ingredients from Moss can be part of a recipe list.” *Id.* The Examiner further finds Kolawa’s disclosure of “a system for recommending recipes and shopping lists includes a customer database, a

recipe database, a product database, and a network computer coupled to the customer database, recipe database, and product database” also teaches the disputed mapped data structure. *Id.* (citing Kolawa, col. 2, ll. 14–35).

Addressing Appellant’s contentions that Moss fails to teach additional aspects of claim 33 (*see* Appeal Br. 23–26), the Examiner again explains the rejection is based on the combination of Moss, Geller, Kolawa, and Harlan, not Moss alone, and why Geller, Kolawa, and Harlan cure the argued deficiencies of Moss. Ans. 11–14.

V. Appellant’s Reply

Appellant replies, arguing:

In Moss, the consumer is creating a list of shopping preferences. In claim 33, the mapping data structure is creating a product set. Harlon and Kolawa provide storage and organization of [a] recipe database. In claim 33, the product set is created for each ingredient of the recipe by determining the products in the product database that match product attributes of the ingredients in the recipe. Moss would still have the consumer creating the list of shopping preferences, even if Harlon and Kolawa would have a list of ingredients from a recipe available. The mapping data structure organizes a product set for each ingredient of the recipe to simplify the overall task for the user.

Reply Br. 9–10.

Appellant further argues Moss’s disclosure of building a shopping list is deficient in teaching claim element (v) because it fails to “describe building a shopping list from the product sets using the first computing system based on the weighted attribute of the products.” *Id.* at 11.

Appellant contends “Moss . . . does not describe the mapping data structure enhances the operation between the first computing system and second computing system by creating the product set in order to build the shopping

list from the weighted attributes of the products.” *Id.* Finally, Appellant argues that combining Geller’s user weighting of the importance of product attributes with Moss’s product selection would nonetheless fail to teach the limitations of claim 33, because “Moss would still have the consumer creating the list of shopping preferences; Geller would not change that fact even with weighing the importance of product attributes.” *Id.*

V. Analysis

Appellant’s contentions of error are unpersuasive in connection with the rejection of claims under 35 U.S.C. § 103. As discussed above in connection with the rejection of claims under 35 U.S.C. § 101, the recited mapping data structure is interpreted as the recited functionalities devoid of any particular structure that might otherwise be attributable to a data structure. Thus, we only need consider whether the prior art teaches the recited steps in deciding whether the functions attributable to claimed mapping data structure are taught or suggested by the applied references. Regardless, under a broad but reasonable definition, Moss’s Figure 21 depicting an interface allowing a user to create a list of shopping preferences at least suggests a mapping data structure.

Appellant’s argument that “Moss would still have the consumer creating the list of shopping preferences, even if Harlon and Kolawa would have a list of ingredients from a recipe available” (Ans. 10) is not commensurate in scope with claim 33. In particular, claim 33 does not exclude user interaction in the creation of the shopping list, it only requires a shopping list be built from the products sets *using* the first computing system. In any case, Moss’s disclosure that a consumer selection of items results in the system generating an “optimal shopping itinerary” (Moss

¶ 271) for those items in the form of a “shopping list” (Moss ¶ 274 *et seq.*) teaches or suggests the disputed shopping list. *See also* Kolawa, col. 2, ll. 14–27, 45–48 (disclosing “a system for recommending recipes and shopping lists includes a customer database, a recipe database, a product database, and a network computer coupled to the customer database, recipe database, and product database. . . . The network computer . . . creates a shopping list including ingredients associated with the selected recipe.”)

We also disagree the rejection is deficient because Moss’s shopping list fails to consider the weighted attributes of products (Reply Br. 11) because such argument fails to address the Examiner’s findings that Geller teaches or suggests the disputed weighted attributes. Final Act. 10, Ans. 12, 13–14. Thus, Appellant’s argument is an improper attack on Moss individually when the rejection is based on a combination of references. *In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986).

Appellant’s contention of error in connection with dependent claims 34, 40, and 47 argues Geller does not disclose the claimed mapping structure. This argument is unpersuasive for the reasons discussed above finding Moss teaches or suggests the disputed mapping data structure. We agree with the Examiner in finding Geller otherwise teaches or suggests the limitations of the disputed dependent claims. *See* Final Act. 20, Ans. 13–14.

Conclusion

For the reasons discussed above, Appellant’s contentions of Examiner error in connection with the rejection of independent claims 33, 39, and 46 and dependent claims 34, 40, and 47 are unpersuasive. Accordingly, we sustain the rejection of claims 33, 34, 39, 40, 46, and 47 under 35 U.S.C.

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§ 103 together with the rejection of dependent claims 35–38, 41–45, and 48–52, which are not argued separately with particularity.

DECISION SUMMARY

We affirm the Examiner’s rejection of claims 33–52 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter.

We affirm the Examiner’s rejection of claims 33–52 under 35 U.S.C. § 103 over Moss, Geller, Kolawa, and Harlan.

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
33–52	101	Eligibility	33–52	
33–52	103	Moss, Geller, Kolawa, Harlan	33–52	
Overall			33–52	

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)(1). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED