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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte LIOR HARAMATY

Appeal 2019-002124
Application 14/274,151
Technology Center 2100

Before ALLEN R. MacDONALD, JAMES B. ARPIN, and
MICHAEL J. ENGLE, *Administrative Patent Judges*.

MacDONALD, *Administrative Patent Judge*.

DECISION ON APPEAL
STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's rejection of claims 14–20. Non-final Act. 3–13. Appellant cancelled claims 1–13. *Id.* at 2. Appellant withdrew claims 21–26 from consideration as directed to a non-elected invention. Appeal Br. 3. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ Appellant identifies Lior Haramaty (Inventor and Applicant) as the real party in interest. Appeal Br. 3.

CLAIMED SUBJECT MATTER

Claims 14 and 15 are illustrative of the claimed subject matter
(emphasis, formatting, and bracketed material added):

14. A closed loop, dynamic method for continuously optimizing a website according to continuously updated data comprising:

[A.] **monitoring** via at least one processor various parameters on a website or part of a website on which

- [i.] an activity,
- [ii.] an activity level, or
- [iii.] a plurality of activities

is carried out;

[B.] **changing** via at least one processor, at least one element on the website or on part of the website according to changes in monitored parameters; and

[C.] **optimizing** automatically via said at least one processor, **an effectiveness** of the website or part of the website to achieve

- [i.] a desired activity,
- [ii.] a desired activity level or
- [iii.] a desired plurality of activities

as a result of at least one changed element;

[D.] wherein the at least one processor

- [i.] **runs for a period of time and then stops, or**
- [ii.] **runs continuously**

to **optimize** and **dynamically change** at least one of the website, a part of the website, or a plurality of websites.

15. The method according to claim 14,

[E.] wherein the at least one element includes one or more
of

- [i.] a design;
- [ii.] a content;
- [iii.] an image;
- [iv.] a video;
- [v.] a hyperlink;
- [vi.] an audio;
- [vii.] a media file;
- [viii.] any element that influences accessibility and/or performance of the website such as, but not limited to,
 - [a.] speed,
 - [b.] resolution, and
 - [c.] color depth;
- [ix.] an element that can be perceived by a user
 - [a.] consciously or
 - [b.] subconsciously;
- [x.] any offering on the website such as, but not limited to,
 - [a.] ***a price***,
 - [b.] a shipping option,
 - [c.] ***a sale***,
 - [d.] a deal,
 - [e.] a product packaging,
 - [f.] a name,
 - [g.] ***a monetary incentive***, and
 - [h.] a referral incentive; and
 - [i.] any functionality of the website.

17. The method according to claim 16,
[E] wherein a dynamically measured feature of the activity or the plurality of activities relates to one of
- [i.] a date,
 - [ii.] a time of day,
 - [iii.] a geographical location of a user,
 - [iv.] a best approximation of the user's geographical location,
 - [v.] *a season of year* either at the user's geographical location or at another location,
 - [vi.] a language setting of a machine accessing the website,
 - [vii.] any information that is known about the machine and/or a user accessing the website,
 - [viii.] any information that is assumed about the user accessing the website,
 - [ix.] any information that was pre-evaluated about the user accessing the website,
 - [x.] any information that was pre-acquired about the user accessing the website, and
 - [xi.] *any information* either dynamic or predefined.

REFERENCES²

The Examiner relies on the following references:

Name	Reference	Date
Blinnikka	US 2013/0117663 A1	May 9, 2013
Siroker	US 8,839,093 B1	Sept. 16, 2014

² All citations herein to patent and pre-grant publication references are by reference to the first named inventor only.

REJECTIONS³

A.

The Examiner rejects claims 14–20 under 35 U.S.C. § 101 “because the claimed invention is directed to a judicial exception . . . without significantly more” (Non-final Act. 4), i.e., the claimed invention is directed to patent-ineligible subject matter . Non-final Act. 3–5.

We select independent claim 14 as representative for this rejection. Except for our ultimate decision, we do not discuss the merits of the § 101 rejection of claims 15–20 further herein.

B.

The Examiner rejects claims 14, 15, 19, and 20, under 35 U.S.C. § 102(a)(2) as anticipated by Blinnikka. Non-final Act. 5–8. We select claim 14 as the representative claim for this rejection. Appellant does not present separate arguments challenging the rejection of claims 15, 19, and 20. Except for our ultimate decision, we do not address the merits of the § 102(b) rejection of claims 15, 19, and 20 further herein.

C.

The Examiner rejects dependent claims 16–18 under 35 U.S.C. § 103 as unpatentable over the combined teachings of Blinnikka and Siroker. Non-final Act. 9–11. The Examiner does not rely on Siroker to cure the deficiencies of Blinnikka for independent claim 14 discussed below, so the

³ All citations to the “Non-final Act.” are to the Non-final Action mailed on February 8, 2018.

All citations to the “Appeal Br.” are to the Appeal Brief filed on August 8, 2018.

contentions discussed herein as to claim 14 are determinative as to this rejection.

Except for our ultimate decision, we do not address the merits of the § 103 rejection of claims 16–18 further herein.

OPINION

We have reviewed the Examiner’s rejections in light of Appellant’s arguments that the Examiner errs. We highlight the following points.

A. Section 101

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

In determining whether a claim falls within an excluded category, we are guided by the Court’s two-part framework, described in *Mayo* and *Alice*. *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 Alice*, 573 U.S. at 219 (“On their face, the claims before us are drawn to the concept of intermediated settlement, *i.e.*, the use of a third party to mitigate settlement risk.”); *see also Bilski v. Kappos*, 561 U.S. 593, 611 (2010) (“Claims 1 and 4 in petitioners’ application explain the basic concept of hedging, or protecting against risk.”).

Concepts determined to be abstract ideas, and, thus, patent ineligible, include certain methods of organizing human activity, such as fundamental economic practices (*Alice*, 573 U.S. at 219–20; *Bilski*, 561 U.S. at 611); mathematical formulas (*Parker v. Flook*, 437 U.S. 584, 594–95 (1978)); and mental processes (*Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)). Concepts determined to be patent eligible include physical and chemical processes, such as “molding rubber products” (*Diamond v. Diehr*, 450 U.S. 175, 191 (1981)); “tanning, dyeing, making waterproof cloth, vulcanizing India rubber, smelting ores” (*id.* at 182 n.7 (quoting *Corning v. Burden*, 56 U.S. 252, 267–68 (1853))); and manufacturing flour (*Benson*, 409 U.S. at 69 (citing *Cochrane v. Deener*, 94 U.S. 780, 785 (1876))).

In *Diehr*, the claim at issue recited a mathematical formula, but the Court held that “a claim drawn to subject matter otherwise statutory does not become nonstatutory simply because it uses a mathematical formula.” *Diehr*, 450 U.S. at 187; *see also id.* at 191 (“We view respondents’ claims as nothing more than a process for molding rubber products and not as an attempt to patent a mathematical formula.”). Having said that, the Court also indicated that a claim “seeking patent protection for that formula in the abstract . . . is not accorded the protection of our patent laws, and this principle cannot be circumvented by attempting to limit the use of the formula to a particular technological environment.” *Id.* (citation omitted) (citing *Benson* and *Flook*); *see, e.g., id.* at 187 (“It is now commonplace that an *application* of a law of nature or mathematical formula to a known structure or process may well be deserving of patent protection.”).

If the claim is “directed to” an abstract idea, we turn to the second part of the *Alice* and *Mayo* framework, where “we must examine the elements of

the claim to determine whether it contains an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Alice*, 573 U.S. at 221 (quotation marks omitted). “A claim that recites an abstract idea must include ‘additional features’ to ensure ‘that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].’” *Id.* (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.*

B. USPTO § 101 Guidance

In January 2019, the U.S. Patent and Trademark Office (USPTO) published revised guidance on the application of § 101. 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) (“2019 Revised Guidance”).⁴ “All USPTO personnel are, as a matter of internal agency management, expected to follow the guidance.” *Id.* at 51; *see also* October 2019 Update at 1.

Under the 2019 Revised Guidance and the October 2019 Update, we first determine 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) (“Step 2A, Prong One”); and

⁴ In response to received public comments, the Office issued further guidance on October 17, 2019, clarifying the 2019 Revised Guidance. USPTO, *October 2019 Update: Subject Matter Eligibility* (the “October 2019 Update”) (available at https://www.uspto.gov/sites/default/files/documents/peg_oct_2019_update.pdf).

(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)) (“Step 2A, Prong Two”).⁵

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 determine under Step 2B whether the claim:

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

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

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

C. Examiner’s § 101 Rejection - *Alice/Mayo* - Parts 1 and 2

C.1. 2019 Revised Guidance Step 2A – Prong One

Applying the *Alice/Mayo* framework, the Examiner determines that claim 14 recites an abstract idea:

Independent claim 14 is directed to a method for optimizing a website, including *monitoring parameters* on a website, *changing at least one element* on the website according to changes in monitored parameters, and *optimizing* an

⁵ This evaluation is performed by (a) identifying whether there are any additional elements recited in the claim beyond the judicial exception, and (b) evaluating those additional elements individually and in combination to determine whether the claim as a whole integrates the exception into a practical application. *See* 2019 Revised Guidance - Section III(A)(2), 84 Fed. Reg. 54–55.

effectiveness of the website to achieve a desired activity, activity level, or a desired plurality of activities as a result of the at least one changed element. Therefore, claim 14 is directed to the abstract idea of monitoring parameters on a website and changing an element on the website according to changes in the monitored parameters, and as such is not meaningfully different from ideas found to be abstract by the courts in other cases because the claim is directed to “*certain methods of organizing human activity.*” See *Bilski, Alice*.

Ans. 3 (emphasis added).

C.2. 2019 Revised Guidance Step 2A – Prong Two⁶

Further applying the *Alice/Mayo* framework, the Examiner determines claim 14 is directed to an abstract idea.

[T]he purported advantages of dynamic change to a website element and testing effectiveness and changing elements of the website according to test results in an automatic way, were held by the court in *Int. Ventures* to ***not amount to inventive concepts***, and instead were identified as abstract ideas. *Int. Ventures* [*v. Capital One Bank*, 792 F.3d 1363, 1371 (Fed. Cir. 2015)].

The ’382 patent of *Int. Ventures* recited in claim 1 “an interactive interface configured to provide dynamic web site navigation data to the user.” *Int. Ventures*, 1370. In *Int. Ventures*, the court found that tailoring information on a website was equivalent to an abstract idea, and that making a determination to present certain information based on a user’s falling into a certain category and presenting information based on the determination was an abstract idea that did not confer patent eligibility. *Id.* Here, appellant’s invention makes a similar

⁶ We acknowledge that some of the considerations at Step 2A, Prong Two, properly may be evaluated under the second part of *Alice/Mayo* framework (Step 2B of the Office’s guidance). For purposes of maintaining consistent treatment within the Office, we evaluate those considerations under first part of the *Alice/Mayo* framework (Step 2A of the Office’s guidance). See 2019 Revised Guidance, 84 Fed. Reg. at 55 nn.25, 27–32.

determination to tailor content on a website, as disclosed in the specification “an algorithm finds the best option or options for changing various elements on the website, then changes those elements by zooming into the actual website which is modified to use the best performing parameter or parameters through a process by which the best performers survive.” (Specification, p. 2, par. 0004). In the case of the invention claimed in claim 14, the determination of which information to present on the website is made by an algorithm finding the best option or options for changing elements on the website, and is therefore similarly directed to an abstract idea.

Ans. 4–5.

Unlike *Core Wireless*, appellant’s specification does not point out any specific deficiencies of the prior art to provide a solution amounting to significantly more than an abstract idea, but rather makes a general assertion that the generic abstract idea itself is an advantage over the prior art.

Ans. 6.

C.3. 2019 Revised Guidance Step 2B

Applying the *Alice/Mayo* framework, the Examiner determines:

Applying step two of the *Alice* test, claim 14 has no inventive concept which would cause the claimed invention to amount to significantly more than an abstract idea. The invention claimed in independent claim 14 is similar to the website display claimed in *Int. Ventures v. Capital One Bank*, where the court held that an “interactive interface” is a generic computer element and not a patent-eligible inventive concept. Here, claim 14 recites the generic computer elements of “website” and “processor,” which are both generic computer components which perform generic computer functions.

Ans. 4 (emphasis omitted).

D. Appellant's § 101 Arguments & Panel's § 101 Analysis

D.1. 2019 Revised Guidance Step 2A, Prong 1

D.1.a.

Claim 14 recites a method for optimizing a website including the following limitations:

A closed loop, dynamic method for continuously optimizing a website according to continuously updated data comprising:

[A.] *monitoring* via at least one processor *various parameters* on a website or part of a website on which

[i.] an activity,

[ii.] an activity level, or

[iii.] a plurality of activities

is carried out;

[B.] *changing* via at least one processor, *at least one element* on the website or on part of the website *according to changes in monitored parameters*; and

[C.] *optimizing* automatically via said at least one processor, *an effectiveness* of the website or part of the website to achieve

[i.] a desired activity,

[ii.] a desired activity level or

[iii.] a desired plurality of activities

as a result of at least one changed element;

[D.] wherein the at least one processor

[i.] *runs* for a period of time and then stops, *or*

[ii.] *runs continuously*

to *optimize* and *dynamically change* at least one of the website, a part of the website, or a plurality of websites.

Claim 14 (formatting and bracketed material added).

Claim 15 further recites:

The method according to claim 14, wherein the at least one element includes one or more of . . .

- [x.] any offering on the website such as, but not limited to,
 - [a.] *a price*,
 - [b.] a shipping option,
 - [c.] *a sale*,
 - [d.] a deal,
 - [e.] a product packaging,
 - [f.] a name,
 - [g.] *a monetary incentive*, and
 - [h.] a referral incentive; and
 - [i.] any functionality of the website.

Claim 15 (formatting and bracketed material added).

Claim 17 (depending from claim 16 in-turn depending from claim 14) further recites.

The method according to claim 16, wherein a dynamically measured feature of the activity or the plurality of activities relates to one of . . .

- [i.] a date,
- [ii.] a time of day,
- [iii.] a geographical location of a user,
- . . .
- [v.] *a season of year* either at the user's geographical location or at another location,
- . . .
- [xi.] *any information* either dynamic or predefined.

Claim 17 (formatting and bracketed material added).

D.1.b.

Appellant acknowledges that the claimed invention encompasses improving effectiveness of sales. Appeal Br. 10; *see also* Appeal Br. 16. Further, Appellant’s claim 15 recites that the “at least one element” of claim 14 can be “a price” or “a sale.” Furthermore, Appellant points out that the “parameter” of claim 14 may include the user’s season, time of day, or geographical location. Spec. 31–34; *see also* Appellant’s claim 17.

D.1.c.

As evidenced by Appellant’s claims 15–17 and Specification at paragraphs 31–34, claim 14 encompasses sales activities related to the parameter of a date, a season, or any other information. We determine that claim 14 (specifically, the limitations italicized in claim 14 directly above) relates to improving (or optimizing) sales activities (i.e., commercial interaction); and *a commercial interaction* is one of certain methods of organizing human activity identified in the 2019 Revised Guidance, and, thus, an abstract idea. 84 Fed. Reg. at 52. We conclude the Examiner correctly determines that claim 14 *recites* an abstract idea.

D.2. 2019 Revised Guidance Step 2A, Prong 2

D.2.a.

Having determined that claim 14 *recites* an abstract idea, we now determine whether claim 14 *is directed to* that abstract idea, or instead integrates the judicial exception into a practical application.

D.2.b.i.

Appellant essentially contends the claim is directed to making “non-abstract improvements to computer technology.” Appeal Br. 9.

As far as Appellant knows, no one is testing *effectiveness* (*sales, time on website click through etc.*), and changing elements of the website according to test results in an automatic way that feeds back each process based on the changing information to make the website better and better, while continuously adapting to changes in the monitored effectiveness (changes due for instance to changing elements such *seasons*, color preferences, popular music, etc.).

Appeal Br. 10 (emphasis added).

This consideration also has been referred to as the search for a technological solution to a technological problem. *See Amdocs (Isr.) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1300 (Fed. Cir. 2016) (“[T]his claim entails an unconventional technological solution . . . to a technological problem . . .”). As discussed above, we conclude that Appellant’s claim 14 is solving the problem of “improving (or optimizing) sales activities,” which is a business problem, not a technological problem. We do not agree with Appellant that “changing a sales element based on a date or based on a season” are a “technological field,” a “technological problem,” or a “technological solution.” Rather, we determine that these additional elements are directed to the field of business/commerce and its problems and solutions. Appellant’s argument is not persuasive.

D.2.c.

In view of Appellant’s Specification, and consistent with the Examiner’s determinations, we conclude that claim 14 does not integrate the

judicial exception into a practical application. We determine claim 14 does not recite:

- (i) an improvement to the functioning of a computer;
- (ii) an improvement to another technology or technical field;
- (iii) an application of the abstract idea with, or by use of, a particular machine;
- (iv) a transformation or reduction of a particular article to a different state or thing; or
- (v) other meaningful limitations beyond generally linking the use of the abstract idea to a particular technological environment.

See MPEP §§ 2106.05(a)–(c), (e)–(h). We agree with the Examiner that claim 14 is *directed to* a judicial exception, i.e., certain methods of organizing human activity, and does not integrate that judicial exception into a practical application. Ans. 3.

D.3. 2019 Revised Guidance Step 2B

D.3.a.

Appellant contends:

[C]laim 14, and therefore all claims dependent on claim 14, as well as claim 20, recite “significantly more than the judicial exception” as being directed to an activity or activities that are not merely a “concept” of monitoring, changing and optimizing website data, also are *not* just a function of a *generic* computer. A generic computer could *not* perform the tasks set by the method without the explicit limitations recited in claims 14 and 20.

Appeal Br. 8.

Appellant’s argument is not persuasive. Appellant appears to reference the Office’s *Berkheimer* memorandum (Appeal Br. 8 (next to last paragraph)),⁷ and argues the significantly more analysis requires inclusion of determining whether the “explicit limitations” directed to the abstract idea represent well-understood, routine, conventional activity. We disagree with Appellant’s argument on two points.

First, we find no such “including the abstract idea” requirement set forth in the *Berkheimer* memorandum or any case law. To the contrary, “[i]t has been clear since *Alice* that a claimed invention’s use of the ineligible concept to which it is directed cannot supply the inventive concept that renders the invention ‘significantly more’ than that ineligible concept.” *BSG Tech LLC v. BuySeasons, Inc.*, 899 F.3d 1281, 1290 (Fed. Cir. 2018).

Under the *Berkheimer* memorandum (directed to the second part of the *Alice/Mayo* framework), the Examiner is only required to show that the *additional* elements—such as a processor—are well-understood, routine, and conventional features in the prior art. The Examiner is not required to show (a) the abstract idea, or (b) the abstract idea in combination with the argued additional elements, is similarly well-understood, routine, and conventional. *See, e.g., Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 591 (2013) (“Groundbreaking, innovative, or even brilliant discovery does not by itself satisfy the § 101 inquiry.”); *see also Aatrix Software, Inc. v. Green Shades Software, Inc.*, 890 F.3d 1354, 1359 (Fed. Cir. 2018) (“It is

⁷ USPTO memorandum issued on April 19, 2018, titled “Changes in Examination Procedure Pertaining to Subject Matter Eligibility, Recent Subject Matter Eligibility Decision (*Berkheimer v. HP, Inc.*).”

clear from *Mayo* that the ‘inventive concept’ cannot be the abstract idea itself.”).

Second, Appellant’s argument is wrapping the conventional functions (e.g., generic computer functions) with a business solution of improved sales activity. We determine that Appellant’s business solution (even if novel) does not supply an inventive concept that renders the recited method “significantly more” than that judicial exception. “[U]nder the *Mayo/Alice* framework, a claim directed to a newly discovered law of nature (or natural phenomenon or abstract idea) cannot rely on the novelty of that discovery for the inventive concept necessary for patent eligibility.” *Genetic Techs. Ltd. v. Merial L.L.C.*, 818 F.3d 1369, 1376 (Fed. Cir. 2016); *see Diehr*, 450 U.S. at 188–89.

D.3.b.

We agree that the Examiner correctly determines that in addition to the abstract idea, claim 14 recites only well-understood, routine, conventional elements/combination of elements previously known in the industry. *E.g.*, *Alice*, 573 U.S. at 222–23 (“the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention”). In view of Appellant’s Specification, and consistent with the Examiner’s determinations, we determine that beyond the abstract idea, the claims do not recite:

- (vi) a specific limitation other than what is well-understood, routine, conventional activity in the field or unconventional steps that confine the claim to a particular useful application.

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See MPEP § 2106.05(d). Consequently, we conclude that the claims are directed to an abstract idea without significantly more, and we sustain the Examiner's rejection of the claims under 35 U.S.C. § 101.

E. § 102(a)(2) – Claim 14

E. 1.

Appellant's claim 14 recites in-part.

monitoring via at least one processor various parameters on a website or part of a website on which an activity, an activity level, or a plurality of activities is carried out;

changing via at least one processor, at least one element on the website or on part of the website ***according to changes in monitored parameters***; and

The Examiner rejects claim 14 under 35 U.S.C. § 102(a)(2), reasoning in-part:

Blinnikka teaches monitoring user activities such as selection, to change elements in a web site according to changes in selection or other monitored parameters (par. 0031–0035). Blinnikka further teaches that user interactions with a first amount of content may influence the display of a second amount of content (par. 0037).

Non-final Act. 6.

Appellant contends the Examiner erred in rejecting claim 14 under 35 U.S.C. § 102(a)(2). In particular, Appellant contends:

Blinnikka does not suggest, “*dynamically monitoring performance and adjusting web page and/or website elements accordingly or randomly or as a combination of the two*, while optionally dynamically changing test parameters” (Abstract, emphasis added).

Appeal Br. 12.

The Examiner responds:

[A]ppellant's arguments are *directed to features which are not recited in the rejected claims*, i.e., . . . “dynamically monitoring performance and adjusting web page and/or website elements accordingly or randomly or as a combination of the two, while optionally dynamically changing test parameters.” (Page 12 of the Brief).

Ans. 7 (emphasis added). We do not find where the Examiner otherwise meaningfully responds to Appellant's “dynamically monitoring” argument.

E.2.

Although we agree with the Examiner that the specific “dynamically monitoring” language argued by Appellant, is not found in claim 14, we disagree that the argument is “directed to features which are not recited in” rejected claim 14. We determine that Appellant's argument is reasonably directed to the “monitoring” and “changing” steps recited in claim 14.

Upon consideration of Appellant's argument and reviewing the Blinnikka reference , we are unable to locate support for the Examiner's findings as to the claimed “monitoring” and “changing” steps in cited paragraphs 31–35 and 37 of Blinnikka. We conclude the Examiner's analysis fails to explain adequately the findings of fact.

We conclude, consistent with Appellant's arguments, that there is insufficient articulated reasoning to support the Examiner's finding that Blinnikka teaches the argued claim limitation. Therefore, we conclude that there is insufficient articulated reasoning to support the Examiner's finding that claim 14 is anticipated by Blinnikka. We do not sustain the rejection of claim 14 or claims 15, 19, and 20, which depend therefrom, under 35 U.S.C. § 102(a)(2)

CONCLUSION

The Examiner does not err in rejecting claims 14–20 under 35 U.S.C. § 101, as directed to patent-ineligible subject matter.

Appellant shows the Examiner errs in rejecting claims 14, 15, 19, and 20 as anticipated under 35 U.S.C. § 102(a)(2).

Appellant shows the Examiner errs in rejecting claims 16–18 as unpatentable under 35 U.S.C. § 103.

The Examiner’s rejection of claims 14–20 under 35 U.S.C. § 101, as directed to patent-ineligible subject matter, is **affirmed**.

The Examiner’s rejection of claims 14, 15, 19, and 20 as anticipated under 35 U.S.C. § 102(a)(2) is **reversed**.

Because claims 16–8 depend from independent claim 14, the Examiner’s rejection of claims 16–18 as unpatentable under 35 U.S.C. § 103 is **reversed**.

DECISION SUMMARY

Because we affirm the Examiner's rejection of each of the pending claims, we affirm the Examiner's rejection of claims 14–20.

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
14–20	101	Eligibility	14–20	
14, 15, 19, 20	102(a)(2)	Blinnikka		14, 15, 19, 20
16–18	103	Blinnikka, Siroker		16–18
Overall Outcome			14–20	

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