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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte TIMOTHY ALLEN MUSGROVE and ROBIN HIROKO WALSH

Appeal 2019-002379
Application 14/954,491
Technology Center 2100

Before JOHN A. EVANS, LARRY J. HUME, and
JAMES W. DEJMEK, *Administrative Patent Judges*.

EVANS, *Administrative Patent Judge*.

DECISION ON APPEAL
STATEMENT OF THE CASE

Jurisdiction

Appellant¹ seeks our review under 35 U.S.C. § 134(a) of the Examiner’s final rejection of Claims 1–3, 5–17 and 19–28, all pending claims. Appeal Br. 2. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.²

¹ We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42 (2017). Appellant states the real party in interest is CBS Interactive Corp. Appeal Br. 2.

² Rather than reiterate the arguments of Appellant and the Examiner, we

Summary of the Invention

The claims relate to assembling a multi-source product catalogue. *See* Abstract.

Invention

Claims 1 and 15 are independent. Claims App. An understanding of the invention can be derived from a reading of Claim 1, which is reproduced in Table 1, *infra*.

References

Name	Publication Number	Date
Zhilyaev	US 6,137,911	Oct. 24, 2000
Pugliese	US 2001/0044751 A1	Nov. 22, 2001

refer to the Appeal Brief (filed July 27, 2018, “Appeal Br.”), the Supplemental Appeal Brief (filed September 12, 2018, “Suppl. Br.”), the Reply Brief (filed January 30, 2019, “Reply Brief”), the Examiner’s Answer (mailed January 10, 2019, “Ans.”), the Final Action (mailed February 16, 2018, “Final Act.”), and the Specification (filed February 10, 2017, “Spec.”) for their respective details.

Rejections³

Claims Rejected	35 U.S.C. §	References/Basis
1–3, 5–17, 19–28	101	Subject Matter Eligibility Final Act. 16–20.
1–3, 5–17, 19–28	103(a), Obviousness	Zhilyaev, Pugliese Final Act. 21–31.

ANALYSIS

We have reviewed the rejections of Claims 1–3, 5–17, and 19–28 in light of Appellant’s arguments that the Examiner erred. We have considered in this Decision only those arguments Appellant actually raised in the Briefs. Any other arguments which Appellant could have made but chose not to make in the Briefs are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv). We provide the following explanation to highlight and address specific arguments and findings primarily for emphasis. We consider Appellant’s arguments as they are presented in the Appeal Brief and the Reply Brief.

CLAIMS 1–3, 5–17, AND 19–28: INELIGIBLE SUBJECT MATTER

Appellant argues the merits of the claims as a group without reference to the limitations of individual claims. “The claims are directed to aggregating product information for use in a product database including records of various products arranged in product categories.” Appeal Br. 9; *see also* Appeal Br. 11, 12. Therefore, we decide the appeal of the § 101 rejection on the basis of representative Claim 1 and refer to the rejected

³ The Application was examined under the pre-AIA first to invent provisions. Final Act. 2.

claims collectively herein as “the claims.” *See* 37 C.F.R. § 41.37(c)(1)(iv); *In re King*, 801 F.2d 1324, 1325 (Fed. Cir. 1986).

We reviewed the record *de novo*. *SiRF Tech., Inc. v. Int’l Trade Comm’n*, 601 F.3d 1319, 1331 (Fed. Cir. 2010) (“Whether a claim is drawn to patent-eligible subject matter is an issue of law that we review *de novo*.”). Based upon our review of the record in light of recent policy guidance with respect to patent-eligible subject matter rejections under 35 U.S.C. § 101,⁴ we affirm the rejection of Claims 1–3, 5–17, and 19–28 for the specific reasons discussed below. Appellant argues: “the USPTO has recently adopted, as required examination procedure, much of the analysis set forth in case law and argued by Applicant, and which is missing from the rejection.” Reply Br. 3 (citing the “2019 Revised Patent Subject Matter Eligibility Guidance”). Our analysis, below, based upon the cited Guidance, renders Appellant’s argument moot.

35 U.S.C. § 101

Section 101 provides that a patent may be obtained for “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.” 35 U.S.C. § 101. The Supreme Court has long recognized, however, that § 101 implicitly excludes “[I]aws of nature, natural phenomena, and abstract ideas” from the realm of patent-eligible subject matter, as monopolization of these ““basic tools of scientific and technological work”” would stifle the very innovation that the patent system aims to promote. *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014)

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

(quoting *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)); *see also Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 72–78 (2012); *Diamond v. Diehr*, 450 U.S. 175, 185 (1981).

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

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

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

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

A. Whether the claims recite a judicial exception

The Revised Guidance extracts and synthesizes key concepts identified by the courts as abstract ideas to explain that the abstract-idea exception includes the following groupings of subject matter:

(a) mathematical concepts,⁵ i.e., mathematical relationships, mathematical

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

formulas, equations,⁶ and mathematical calculations⁷; (b) certain methods of organizing human activity—fundamental economic principles or practices (including hedging, insurance, mitigating risk); commercial or legal interactions (including agreements in the form of contracts; legal obligations; advertising, marketing or sales activities or behaviors; business relations); managing personal behavior or relationships or interactions between people (including social activities, teaching, and following rules or instructions)⁸; and (c) mental processes—concepts performed in the human mind (including observation, evaluation, judgment, opinion).⁹

The preamble of independent Claim 1 recites: “A method of aggregating product information for use in a product database including records of various products arranged in product categories, each product category having a set of product attributes that are associated with a physical

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

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

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

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

product that is in the category, the method comprising the steps of.” The limitations recited in the body of the claim are analyzed in Table I against the categories of abstract ideas as set forth in the Revised Guidance. As set forth in Table I below, we find limitations [c] and [d] of independent Claim 1 recite abstract ideas, i.e., “mental processes.”

Table I

Claim 1	Revised Guidance
[a] ¹⁰ retrieving, by a server coupled to a networked computer environment, product phrase information from at least one product record stored in at least one of a plurality of remote product information computing devices in the networked computer environment, said product phrase information including at least one phrase and at least one characteristic of a described product;	An additional element that adds insignificant extra-solution activity to the judicial exception, i.e., mere data-gathering. <i>See Revised Guidance at 55.</i>
[b] determining, using computational linguistics, whether at least one said phrase of said product phrase information describes a product attribute associated with a product category by cross-referencing said product phrase information to a category database to determine a product category of the described product;	Mental processes, i.e., concepts performed in the human mind (including an observation, evaluation, judgment, opinion). <i>See Revised Guidance at 52.</i>
[d] creating a catalog record for the described product including product	Mental processes, i.e., concepts performed in the human mind

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

attributes corresponding to the product category; and	(including an observation, evaluation, judgment, opinion). <i>See</i> Revised Guidance at 52.
[e] storing the record in the product database in association with the product category of the described product.	An additional element that adds insignificant extra-solution activity to the judicial exception. <i>See</i> Revised Guidance at 55.

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

If the claims recite a patent-ineligible concept, as we conclude above, we proceed to the “practical application” *Step 2A(ii)* wherein the “claims are considered in their entirety to ascertain whether their character as a whole is directed to excluded subject matter.” *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1312 (Fed. Cir. 2016) (quotes and citation omitted). This test determines whether the recited judicial exception is integrated into a practical application of that exception by: (a) identifying whether there are any additional elements recited in the claim beyond the judicial exception(s); and (b) evaluating those additional elements individually and in combination to determine whether they integrate the exception into a practical application.

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

MPEP § 2106.05(a) “*Improvements to the Functioning of a Computer or to Any Other Technology or Technical Field*”

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

Appellant contends the “present system is directed to overcoming inefficiencies associated with navigating a collection of editorial content in a computer network.” Appeal Br. 12. Appellant argues the “claims are necessarily rooted in computer technology in order to overcome these inefficiencies. In particular, the claims overcome problems specifically arising in the realm of computer systems.” *Id.* However, Appellant’s evidence fails to support this contention. Appellant discloses:

However, since various merchants and other parties having product information records all store information in various data formats and layouts, collection of information for a product catalog is a tedious and labor intensive task requiring a great deal of manual operations.

Appeal Br. 12 (quoting US 2016/0086239, the published Application (the “’239 Application”), ¶ 9). Contrary to Appellant’s contention, the Specification discloses the problem inheres not in the technology of computer systems, rather the problem relates to manual labor because “collection of information for a product catalog is a tedious and labor intensive task requiring a great deal of manual operations.” ’239 Application, ¶ 9.

Although we find the individual limitations [c] and [d] are directed to mental processes, the claims as a whole are directed to “[c]ertain methods of organizing human activity,” i.e., “commercial or legal interactions [] including . . . advertising, marketing or sales activities or behaviors; business relations.” *See* 84 Fed. Reg. at 52. Because, as Appellant discloses, “[a]n aspect of the invention is a method of creating a product catalog.” ’239 Application, ¶ 10.

MPEP § 2106.05(b): Particular Machine

The *Bilski* machine-or-transformation test is only applicable to method (process) claims. However, “[r]egardless of what statutory category (‘process, machine, manufacture, or composition of matter,’ 35 U.S.C. § 101) a claim’s language is crafted to literally invoke, we look to the underlying invention for patent-eligibility purposes.” *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1374 (Fed. Cir. 2011). Here, it is clear that the invention underlying the system of Claim 16 is the method of Claim 1. We therefore, analyze the machine prong of the *Bilski* machine-or-transformation test.

Appellant discloses generic machines and software are suitable:

[c]ommerce system 10 includes client computer 12 executing browser application 14 that supports the HTTP protocol, . . . public domain web server software applications from NCSA or APACHE can be used.

Spec. ¶ 19.

Merchant servers 40 and commerce server software are well known and thus are not described in detail herein.

Spec. ¶ 20.

Any type of hardware or combination of hardware can be used for the various clients and servers. Accordingly, the term “computer” as used herein, refers to any type of computing device or data terminal, such as a personal computer, a portable computer, a dumb terminal, a thin client, a hand held device, a wireless phone, or any combination of such devices.

Spec. ¶ 37.

Any appropriate server or client software can be used and any communication protocols can be used.

Spec. ¶ 37.

Such product information may be culled from product information records of various sources by using automated crawlers as described below and updated periodically to correspond with current products available on merchant servers 40. The term “crawler” as used herein refers to any software that performs searches of content over a network and can include “bots”, “robots”, “automated site searchers” and the like.

Spec. ¶ 38.

We find no indication, nor does Appellant so direct our attention, that the claimed invention relies on other than generic devices uses other than generic software. We, therefore, conclude Appellant’s claims fail to satisfy the machine prong of the *Bilski* machine-or-transformation test.

MPEP § 2106.05(c): Particular Transformation

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

Appellant argues “the claims recite transformation of data or information, namely aggregating data from various remote sources, using specific steps of computational linguistics, into product records.” Appellant further argues:

the Patent Trial & Appeal Board (PTAB) has held that claims drawn to computer-implemented methods that transform data or information in a specific way are not directed to an abstract idea, and thus are patentable. In particular, the PTAB held that

the relevant claims transformed receiving data, thus requiring a fundamental change to the data, which cannot be performed in the human mind.

Appeal Br. 13 (citing *PNC Bank*)¹¹, CBM2014-00100, slip op. 22 (PTAB Sept. 9, 2014) (Paper No. 10).

In *PNC Bank*, Claim 1 recites, *inter alia*, “transforming, at an authentication host computer, received data by inserting an authenticity key to create formatted data.” *PNC Bank*, at 3. The Board found the claims took received data and transformed the data by inserting an authenticity key. *Id.* at 5. Appellant points to nothing in the claims or the Specification that might disclose an analogous transformation.

The claims select and analyze certain electronic data. The selection of electronic data is not a “transformation or reduction of an *article* into a different state or thing constituting patent-eligible subject matter[.]” *See In re Bilski*, 545 F.3d 943, 962 (Fed. Cir. 2008) (emphasis added); *see also CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1375 (Fed. Cir. 2011) (“The mere manipulation or reorganization of data . . . does not satisfy the transformation prong.”). Applying this guidance here, we conclude Appellant’s method claims fail to satisfy the transformation prong of the *Bilski* machine-or-transformation test.

MPEP § 2106.05(e): Other Meaningful Limitations

This section of the MPEP guides:

Diamond v. Diehr provides an example of a claim that recited meaningful limitations beyond generally linking the use of the

¹¹ *PNC Bank*, CBM2014-00100, slip op. 22 (PTAB Sept. 9, 2014) (Paper No. 10). We quote the Westlaw publication version: *PNC Bank v. Secure Access*, 2014 WL 4537440 (PTAB 2014).

judicial exception to a particular technological environment. 450 U.S. 175 . . . (1981). In *Diehr*, the claim was directed to the use of the Arrhenius equation (an abstract idea or law of nature) in an automated process for operating a rubber-molding press. 450 U.S. at 177-78 The Court evaluated additional elements such as the steps of installing rubber in a press, closing the mold, constantly measuring the temperature in the mold, and automatically opening the press at the proper time, and found them to be meaningful because they sufficiently limited the use of the mathematical equation to the practical application of molding rubber products. 450 U.S. at 184, 187. . . . In contrast, the claims in *Alice Corp. v. CLS Bank International* did not meaningfully limit the abstract idea of mitigating settlement risk. 573 U.S. . . . In particular, the Court concluded that the additional elements such as the data processing system and communications controllers recited in the system claims did not meaningfully limit the abstract idea because they merely linked the use of the abstract idea to a particular technological environment (i.e., “implementation via computers”) or were well-understood, routine, conventional activity.

MPEP § 2106.05(e).

“[T]he relevant question is whether the claims here do more than simply instruct the practitioner to implement the abstract idea . . . on a generic computer.” *Alice*, 573 U.S. at 225. In the instant appeal, Appellant specifically discloses the claims merely perform an abstract idea, performed by humans, on a computer. *See* Appeal Br. 12 (the claims relate to “a tedious and labor intensive task requiring a great deal of manual operations”). Similarly as in *Alice*, we find that “[t]aking the claim elements separately, the function performed by the computer at each step of the process is ‘[p]urely conventional.’” *Id.* (citation omitted). “In short, each step does no more than require a generic computer to perform generic computer functions.” *Id.*

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

MPEP § 2106.05(f): Mere Instructions to Apply an Exception

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

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

The claims acquire and display data, which are classic examples of insignificant extra-solution activity. *See, e.g., Bilski*, 545 F.3d at 963 (en banc), *aff’d sub nom, Bilski*, 561 U.S. 593.

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

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

Ultramercial, Inc. v. Hulu, LLC, 722 F.3d 1335, 1346 (Fed. Cir. 2013) (citation omitted).

Appellant argues: “the claims on appeal result in creating new catalog records for a products and storing the records in the product database in association with the appropriate product categories.” Appeal Br. 19.

We find the claimed data-manipulation is simply a field of use that attempts to limit the abstract idea to a particular technological environment. We are unpersuaded by Appellant’s arguments because the mere application

of an abstract idea in a particular field is not sufficient to integrate the judicial exception into a practical application. *See* 84 Fed. Reg. at 55, n.32. In view of the foregoing, we conclude the claims are “directed to” a judicial exception.

B. *Well-understood, routine, conventional*

Because the claims recite a judicial exception and do not integrate that exception into a practical application, we must then reach the issue of whether the claim adds a specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field. Revised Guidance, 84 Fed. Reg. at 56; *see* Appeal Br. 23 (citing the “*Berkheimer* Memorandum”).¹² As discussed above, the written description describes the claimed computer system consistent with its being “well-understood, routine, [and] conventional.”

C. Specified at a high level of generality

It is indicative of the absence of an inventive concept where the claims simply append well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception. Revised Guidance, 84 Fed. Reg. at 56.

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

¹² Memorandum from Robert W. Bahr, Deputy Comm’r for Patent Examination Policy, to Patent Examining Corps, U.S. Patent and Trademark Office (April 19, 2018), <https://www.uspto.gov/sites/default/files/documents/memo-berkheimer-20180419.PDF> (citing *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1367–68 (Fed. Cir. 2018)).

We find the limitations are specified at such a high level of generality consistent with the absence of an inventive concept. Considering the claim limitations as an ordered combination adds nothing to the abstract idea that is not already present when the limitations are considered separately. *See Mayo*, 566 U.S. at 79. The ordered combination of limitations amounts to nothing more than certain mental processes implemented with generic computer components that operate “in a conventional way.” *See also Alice*, 573 U.S. at 225–26. Therefore, we conclude that none of the claim limitations, viewed “both individually and as an ordered combination,” amount to significantly more than the judicial exception in order to sufficiently transform the nature of the claims into patent-eligible subject matter. *See Alice*, 573 U.S. at 217 (internal quotations omitted) (quoting *Mayo*, 566 U.S. at 79).

In view of the foregoing, we sustain the rejection of Claims 1–3, 5–17, and 19–28 under 35 U.S.C. § 101.

CLAIMS 1–3, 5–17, AND 19–28: OBVIOUSNESS OVER ZHILYAEV AND PUGLIESE

Appellant argues the merits of the claims as a group without reference to the limitations of individual claims. *See Appeal Br. 20*. Therefore, we decide the appeal of the § 103(a) rejection on the basis of representative Claim 1 and refer to the rejected claims collectively herein as “the claims.” *See 37 C.F.R. § 41.37(c)(1)(iv); In re King*, 801 F.2d 1324, 1325 (Fed. Cir. 1986).

Aggregating product information

Appellant states:

The claimed invention is directed to aggregating product information for use in a product database including records of various products arranged in product categories, each product category having a set of product attributes that are associated with a product that is in the category. Information is retrieved from plural remote sources and computational linguistics are used to determine whether retrieved phrase information includes a phrase that describes a product attribute associated with a product category.

Appeal Br. 20 (emphasis omitted).

Appellant acknowledges Zhilyaev discloses a system for categorizing documents based on the content of the documents. *Id.* However, Appellant argues there is no teaching that the documents describe a product and thus, Zhilyaev is silent with respect to product categories having a set of product attributes that are associated with a physical product that is in the category. *Id.* Appellant acknowledges Pugliese teaches information can be gathered from multiple sources. *Id.* Appellant contends Pugliese relates to product promotion, but not to information about the products. *Id.*

We understand Appellant to admit the Zhilyaev-Pugliese combination teaches the claimed system except contending that the combination fails to teach specific information about the products. *See* Appeal Br. 20 (“Zhilyaev is silent with respect to product categories having a set of product attributes that are associated with a physical product that is in the category.”). The subject matter which Appellant contends is not taught by the prior art is “printed matter,” i.e., “matter claimed for its communicative content.” *See In re Distefano*, 808 F.3d 845, 849 (Fed. Cir. 2015). “The first step of the

printed matter analysis is the determination that the limitation in question is in fact directed toward printed matter. Our past cases establish a necessary condition for falling into the category of printed matter: a limitation is printed matter only if it claims the content of information.” *Distefano*, 808 F.3d at 848. For example, “a chart listing the characteristics of real estate in such manner as to expedite real estate assessments” is “printed matter.” *Distefano*, 808 F.3d at 849 (quoting *In re Reeves*, 62 F.2d 199 (CCPA 1932)). The chart in *Reeves* “listing the characteristics of real estate in such manner as to real estate assessments” conveys information in a manner similar to the claimed “product categories having a set of product attributes that are associated with a physical product that is in the category.” Thus, we find the disputed limitation goes to printed matter. This finding is consistent with Appellant’s arguments. *See* Reply Br. 2 (emphasis omitted) (“The claimed invention is directed to aggregating product information for use in a product database.”).

The Federal Circuit has “long held that if a limitation claims (a) printed matter that (b) is not functionally or structurally related to the physical substrate holding the printed matter, it does not lend any patentable weight to the patentability analysis.” *Distefano*, 808 F.3d at 849 (quoting *In re Gulack*, 703 F.2d 1381, 1384–85 (Fed. Cir. 1983)). “In performing this analysis we do not strike out the printed matter and analyze a ‘new’ claim, but simply do not give the printed matter any patentable weight: it may not be a basis for distinguishing prior art.” *Id.* at 848. Appellant proffers no argument that the claimed printed matter is structurally or functionally related to any claimed substrate. We, therefore, analyze the claimed printed matter, but decline to give it patentable weight.

Analogous art

The Examiner finds: “Zhilyaev is directed to classification system and method. Pugliese is directed to displaying and selling goods and services. Both are analogous art, because they classify and provide product information.” Final Act. 24.

Appellant argues the references are not analogous because “Pugliese is directed to selling goods and services,” but “Pugliese does not relate to categorization.” Appeal Br. 20.

The Examiner finds:

Zhilyaev is directed to classifying documents into one or more clusters corresponding to predefined classification categories by building a knowledge base, where the classification refers to the automated grouping of textual or partial textual entities for document retrieval, categorization, routing, filtering, clustering, tagging, etc. Pugliese is directed to system and method for displaying and selling goods and services using a product catalog database. Both are analogous art, because they use a knowledge base or catalog database as a means to organize, classify, and/or cluster data for use by users, merchants, buyers, shoppers, etc. Both are also analogous because they classify and provide data structure information (e.g. data) based on particular categories (e.g. predefined categories in Zhilyaev and product catalog in Pugliese).

Ans. 9.

Appellant responds:

Under this logic, any references that utilize a database would be analogous art. However, Zhilyaev and Pugliese are directed to very different applications and address very different problems. Zhilyaev classifies documents based on document content Pugliese is directed to assisting in the sale of goods.

Reply Br. 3.

“Two separate tests define the scope of analogous prior art:

(1) whether the art is from the same field of endeavor, regardless of the problem addressed and, (2) if the reference is not within the field of the inventor’s endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved.” *In re Klein*, 647 F.3d 1343, 1348 (Fed. Cir. 2011) (quotes and citation omitted).

Notwithstanding Appellant’s contentions, we find Zhilyaev and Pugliese are “reasonably pertinent to the particular problem with which the inventor is involved.”

We are not persuaded the Examiner errs with respect to the rejection of Claims 1–3, 5–17, and 19–28 under 35 U.S.C. § 103.

DECISION SUMMARY

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–3, 5–17, 19–28	101	Eligibility	1–3, 5–17, 19–28	--
1–3, 5–17, 19–28	103(a)	Zhilyaev, Pugliese	1–3, 5–17, 19–28	--
Overall			1–3, 5–17, 19–28	--

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)(iv). *See* 37 C.F.R. § 41.50(f).

AFFIRMED