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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JOHN HAYWARD and JONATHAN SABADOS

Appeal 2019-002424
Application 12/751,832
Technology Center 3600

Before CATHERINE SHIANG, JASON J. CHUNG, and
JAMES W. DEJMEK, *Administrative Patent Judges*.

DEJMEK, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant¹ appeals from a Non-Final Rejection of claims 1–35. We have jurisdiction over the remaining pending claims under 35 U.S.C. § 6(b). *See Ex parte Lemoine*, 46 USPQ2d 1420, 1423 (BPAI 1994) (precedential).

We affirm in part.

¹ Throughout this Decision, we use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42 (2018). Appellant identifies Click Sales Inc. as the real party in interest. Appeal Br. 2.

STATEMENT OF THE CASE
Introduction

Appellant’s disclosed and claimed invention generally relates to “providing an efficient vendor upsell purchase flow for offering products to customers following an initial purchase of a product.” Spec. ¶ 1. As described in the Specification, upselling is the practice of offering an additional (oftentimes, related) product to a customer who is already purchasing product. Spec. ¶ 2. As an example, if a customer is purchasing a mobile phone, a possible product to suggest to the customer may be a case for the mobile phone. Spec. ¶ 2. Upselling is a known commercial activity.

According to the Specification, a potential issue with conventional upselling techniques is that, by suggesting additional products to a customer as the original product is being purchased, the sale of the original product may be risked. Spec. ¶ 3. Accordingly, the disclosed and claimed invention presents suggested products for purchase to the customer *after* the original product has already been purchased, but *before* the customer is able to take possession of the product. Spec. ¶ 5. For example, if the customer is purchasing a downloadable digital product (e.g., software or a movie), *after* the product has been purchased, but *before* a link to access the downloadable product is made available to the customer (e.g., as contained in a receipt page), the customer is presented with suggested products. *See* Spec. ¶¶ 20–25, 50.

Claim 1 is representative of the subject matter on appeal and is reproduced below with the disputed limitation emphasized in *italics*:

1. A computer-implemented method of providing upsells to a customer device, the method executed by a computer and comprising:

receiving from the customer device a request for a pitch page of a downloadable digital product;

transmitting the pitch page to the customer device;

receiving an indication from the customer device to purchase the downloadable digital product;

responsive to the indication, transmitting an order form to the customer device;

receiving the order form comprising the customer's payment information;

completing a transaction for the customer's purchase of the downloadable digital product based on the payment information included in the order form;

responsive to completing the transaction, providing, by the computer, the customer device with one or more upsell pitch pages that describe one or more additional upsell products, each upsell pitch page including:

a mechanism for accepting to purchase an additional upsell product, advertised on the upsell pitch page, the mechanism for accepting to purchase the additional upsell product displayed in the upsell pitch page, and

a mechanism for declining to purchase the additional upsell product advertised on the upsell pitch page, the mechanism for declining to purchase the additional upsell product displayed in the upsell pitch page;

determining whether a selection of the mechanism accepting to purchase the additional upsell product displayed in at least one upsell pitch page, or a selection of the mechanism declining the additional upsell product displayed in at least one upsell pitch page is received from the customer device;

responsive to determining that a selection of the mechanism accepting the purchase of the additional upsell product displayed at least one upsell pitch page is received from the customer device, or a selection of the mechanism declining

to purchase the additional upsell product displayed in at least one upsell pitch page has been received from the customer device is received from the customer device, providing a receipt page comprising a link to download the downloadable digital product; and

responsive to determining that a selection of the mechanism accepting to purchase the additional upsell product displayed at least one upsell pitch page is not received from the customer device, or a selection of the mechanism declining to purchase the additional upsell product displayed in at least one upsell pitch page is not received from the customer device, refraining from sending the receipt page comprising the link to download the downloadable digital product until at least one interaction with the one or more upsell pitch pages is received.

The Examiner's Rejections²

1. Claims 1–35 stand rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. Non-Final Act. 8–9.
2. Claims 1–8, 11, 12, 15–18, 20–22, 24, 32, and 35 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Gray et al. (US 2002/0156699 A1; Oct. 24, 2002) (“Gray”) and Bhambri et al. (US 2006/0167811 A1; July 27, 2006) (“Bhambri”). Non-Final Act. 11–15.
3. Claims 23 and 26 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Gray, Bhambri, and Utter et al. (US 7,418,405 B1; Aug. 26, 2008) (“Utter”). Non-Final Act. 15–16.

² In addition to the rejections listed below, the Examiner had also rejected claims 1 and 15 under pre-AIA 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. *See* Non-Final Act. 9–10. However, the Examiner has withdrawn this rejection and it is not before us. *See* Ans. 3.

4. Claims 9, 10, 13, 14, 25, 27, and 29–31 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Gray, Bhambri, and Angell et al. (US 2008/0249870 A1; Oct. 9, 2008) (“Angell”).³ Non-Final Act. 16–18.

5. Claim 28 stands rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Gray, Bhambri, Angell, and Utter. Non-Final Act. 18–19.

6. Claims 33 and 34 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Gray, Bhambri, Angell, and Otto et al. (US 2009/0182677 A1; July 16, 2009) (“Otto”). Non-Final Act. 19–20.

ANALYSIS⁴

Rejection under 35 U.S.C. § 101

Appellant disputes the Examiner’s conclusion that the pending claims are directed to patent-ineligible subject matter. Appeal Br. 11–17; Reply

³ We note the Examiner does not include claim 19 in this rejection. *See* Non-Final Act. 18–19. We further note that claim 19 recites commensurate limitations to those recited by claim 10, which is rejected over Gray, Bhambri, and Angell. *See* Non-Final Act. 16–18; *also cf.* claim 10, *with* claim 19. In the event of further prosecution, the Examiner should consider whether claim 19 should be rejected on a similar basis to that of claim 10. Although the Board is authorized to reject claims under 37 C.F.R. § 41.50(b), no inference should be drawn when the Board elects not to do so. *See* Manual of Patent Examining Procedure (MPEP) § 1213.02 (9th ed. Rev. 08.2017, Jan. 2018).

⁴ Throughout this Decision, we have considered the Appeal Brief, filed August 23, 2018 (“Appeal Br.”); the Reply Brief, filed January 29, 2019 (“Reply Br.”); the Examiner’s Answer, mailed November 29, 2018 (“Ans.”); and the Non-Final Office Action, mailed April 4, 2018 (“Non-Final Act.”), from which this Appeal is taken.

Br. 5–9. In particular, Appellant argues “the claimed invention improves the technical field of electronic commerce or e-commerce by attempting to improve user engagement with content items provided to the user.” Appeal Br. 11–14 (citing *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016)); Reply Br. 5–6. In addition, Appellant asserts that similar to the claims held patent eligible in *DDR Holdings, LLC v. Hotels.com*, 773 F.3d 1245 (Fed. Cir. 2014), “the claims solve a problem arising in the realm of computer networks.” Appeal Br. 15–16; Reply Br. 6–7. More specifically, Appellant explains that because the purchased products are claimed to be downloadable products, the claimed solution allows for the upsell products to be presented to the user after purchase of the original product has been completed but before the downloadable product is made available to the customer. Appeal Br. 16–17. Moreover, Appellant argues “the claims recite an unconventional sequence of steps triggered when the user clicks a purchase button,” which amounts to significantly more than the alleged abstract idea of providing upsells to a customer device. Reply Br. 9.

The Supreme Court’s two-step framework guides our analysis of patent eligibility under 35 U.S.C. § 101. *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 217 (2014). In addition, the Office published revised guidance for evaluating subject matter eligibility under 35 U.S.C. § 101, specifically with respect to applying the *Alice* framework. USPTO, 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Office Guidance”). If a claim falls within one of the statutory categories of patent eligibility (i.e., a process, machine, manufacture, or composition of matter) then the first inquiry is whether the claim is directed to one of the judicially recognized exceptions (i.e., a law of nature, a natural phenomenon, or an

abstract idea). *Alice*, 573 U.S. at 217. As part of this inquiry, we must “look at the ‘focus of the claimed advance over the prior art’ to determine if the claim’s ‘character as a whole’ is directed to excluded subject matter.”

Affinity Labs of Tex., LLC v. DIRECTV, LLC, 838 F.3d 1253, 1257 (Fed. Cir. 2016). Per Office Guidance, this first inquiry has two prongs of analysis (i) does the claim recite a judicial exception (e.g., an abstract idea); and (ii) if so, is the judicial exception integrated into a practical application. 84 Fed. Reg. at 54. Under the Office Guidance, if the judicial exception is integrated into a practical application, *see infra*, the claim is patent eligible under § 101. 84 Fed. Reg. at 54–55. If the claims are not directed to an abstract idea, the inquiry ends. *See McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1312 (Fed. Cir. 2016). However, if the claim is directed to a judicial exception (i.e., recites a judicial exception and does not integrate the exception into a practical application), the next step is to determine whether any element, or combination of elements, amounts to significantly more than the judicial exception. *See Alice*, 573 U.S. at 217; *see also* 84 Fed. Reg. at 56.

The Examiner concludes the claims are directed to “providing upsells to a customer device,” which the Examiner determines to be organizing human activity and collecting and organizing data. Non-Final Act. 8–9; *see also* Ans. 9 (concluding the claims “resemble a financial management scheme with merely generic computer implementation, which better aligns with a fundamental economic practice.”) Moreover, the Examiner determines the claims do not recite significantly more than the abstract idea. Non-Final Act. 9; Ans. 6–7, 9. In particular, contrary to Appellant’s assertions, the Examiner explains the pending claims differ from the patent-

eligible claims in *Enfish* because in *Enfish*, the claims focused on an improvement to the functioning of a computer, whereas the instant claims are “at best improvements to the performance of the abstract idea.” Ans. 5. In addition, the Examiner determines that rather than solving a technological problem (as in *DDR*), the instant claims aim to solve a business problem (i.e., user engagement with content items provided to the user). Ans. 9.

Although the claims *involve* commercial interactions (i.e., marketing or sales activities), which fall within certain methods of organizing human activities—an abstract idea (*see, e.g.*, 84 Fed. Reg. at 52)—we are mindful that “an invention is not rendered ineligible for patent simply because it involves an abstract concept.” *Alice*, 573 U.S. at 217. As set forth in the claims, after completing a transaction for the customer’s purchase of a downloadable digital product, but before providing a receipt page comprising a link to the downloadable digital product, the customer is presented with one or more upsell pitch pages describing one or more additional upsell products. As described in the Specification, by providing the upsell after the initial product sale, “the upsell does not interfere with or otherwise jeopardize that initial sale.” Spec. ¶ 5; *see also* Appeal Br. 12 (explaining the claims “include steps that provide **an improved** vendor upsell purchase flow for offering products to customers following an initial purchase of a product”) (citing Spec. ¶ 1). In other words, the customer is a captive audience member for presentation of the upsell products.

Accordingly, we conclude that the focus of the claims (i.e., the character of the claims as a whole) is more than merely providing upsells to a customer device. Instead, we conclude the claims are directed to improving the vendor upsell purchase flow for offering products to

customers following an initial purchase of a downloadable product. *See, e.g.,* Spec. ¶¶ 1, 5.

In *DDR*, the court explained the claims “[did] not merely recite the performance of some business practice known from the pre-Internet world along with the requirement to perform it on the Internet. Instead, the claimed solution is necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks.” *DDR*, 773 F.3d at 1257. In distinguishing from claims that simply use the Internet to perform an abstract business practice, the court explained the claims “specify how interactions with the Internet are manipulated to yield a desired result.” *DDR*, 773 F.3d at 1258. Thus, when the limitations are considered together as an ordered combination, the court concluded the claims “recite an invention that is not merely the routine or conventional use of the Internet.” *DDR*, 773 F.3d at 1259. Accordingly, the court concluded the claims were patent eligible. *DDR*, 773 F.3d at 1259.

We find the court’s reasoning in *DDR* applicable here. Similar to the claims at issue in *DDR*, the pending claims set forth a solution rooted in computer technology to address a business challenge particular to the Internet—namely, providing a technique within an e-commerce transaction to present upsell products to a customer as a requisite step for the customer to receive a purchased downloadable product. The recited steps of presenting the upsell products *after* the completion of a purchase transaction for a downloadable product, but *prior to* the downloadable product being available to the customer are not the routine and conventional sequence of events ordinarily taken in an e-commerce transaction. Accordingly, we conclude the claims are patent eligible under 35 U.S.C. § 101.

Moreover, analysis under the Office Guidance does not alter our conclusion. The Examiner finds the claims are directed to an abstract idea. *See* Non-Final Act. 8–9; Ans. 5–10. In particular, the Examiner finds the claims are directed to “providing upsells to a customer device” i.e., a certain method of organizing human activity and, therefore an abstract idea. Non-Final Act. 8–9; *see also* 84 Fed. Reg. at 52.

Claim 1 is reproduced below and includes the following claim limitation(s) that recite providing upsells to a customer device, emphasized in *italics*:

1. A computer-implemented method of providing upsells to a customer device, the method executed by a computer and comprising:

receiving from the customer device a request for a pitch page of a downloadable digital product;

transmitting the pitch page to the customer device;

receiving an indication from the customer device to purchase the downloadable digital product;

responsive to the indication, transmitting an order form to the customer device;

receiving the order form comprising the customer’s payment information;

completing a transaction for the customer’s purchase of the downloadable digital product based on the payment information included in the order form;

responsive to completing the transaction, *providing, by the computer, the customer device with one or more upsell pitch pages that describe one or more additional upsell products, each upsell pitch page including:*

a mechanism for accepting to purchase an additional upsell product, advertised on the upsell pitch page, the mechanism for accepting to purchase the

additional upsell product displayed in the upsell pitch page, and

a mechanism for declining to purchase the additional upsell product advertised on the upsell pitch page, the mechanism for declining to purchase the additional upsell product displayed in the upsell pitch page;

determining whether a selection of the mechanism accepting to purchase the additional upsell product displayed in at least one upsell pitch page, or a selection of the mechanism declining the additional upsell product displayed in at least one upsell pitch page is received from the customer device;

responsive to determining that a selection of the mechanism accepting the purchase of the additional upsell product displayed at least one upsell pitch page is received from the customer device, or a selection of the mechanism declining to purchase the additional upsell product displayed in at least one upsell pitch page has been received from the customer device is received from the customer device, providing a receipt page comprising a link to download the downloadable digital product; and

responsive to determining that a selection of the mechanism accepting to purchase the additional upsell product displayed at least one upsell pitch page is not received from the customer device, or a selection of the mechanism declining to purchase the additional upsell product displayed in at least one upsell pitch page is not received from the customer device, refraining from sending the receipt page comprising the link to download the downloadable digital product until at least one interaction with the one or more upsell pitch pages is received.

Because the claim recites an abstract idea (i.e., generating a decrypted image by decrypting the encrypted image using the cryptographic shader), we next determine whether the claim integrates the abstract idea into a practical application. 84 Fed. Reg. at 54. To determine whether the judicial exception is integrated into a practical application, we identify whether there

are “any additional elements recited in the claim beyond the judicial exception(s)” and evaluate those elements to determine whether they integrate the judicial exception into a recognized practical application. 84 Fed. Reg. at 54–55 (emphasis added); *see also* Manual of Patent Examining Procedure (“MPEP”) § 2106.05(a)–(c), (e)–(h) (9th ed., Rev. 08.2017, Jan. 2018).

As discussed above, we find the additional limitations integrate the abstract idea (as identified by the Examiner) into a practical application—specifically improving the vendor upsell purchase flow in e-commerce by offering products to customers following the purchase of a downloadable product, but prior to the downloadable product being available to the customer. *See* Spec. ¶¶ 1, 5; *see also* MPEP § 2106.05(a).

Moreover, we find the court’s holding in *BASCOM* instructive.⁵ In *BASCOM*, the court determined that although filtering Internet content is a “longstanding, well-known method of organizing human behavior, similar to concepts previously found to be abstract,” the inventors had recognized “a filter implementation versatile enough that it could be adapted to many different users’ preferences while also installed remotely in a single location.” *BASCOM*, 827 F.3d at 1348–51. Thus, when considered as an ordered combination, the court concluded the claims provided “an inventive concept can be found in the non-conventional and non-generic arrangement of known, conventional pieces.” *BASCOM*, 827 F.3d at 1350.

The court’s reasoning in *BASCOM* is applicable here. Appellant describes that conventional upsell techniques may jeopardize the sale of the

⁵ *BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016).

original product, create additional steps (e.g., web page jumps) before the original product may be purchased, and inaccurately gauge a customer's spending budget. Spec. ¶¶ 3–4. By presenting the upsell products after the original product has been purchased (but before the product is available to the customer), the initial sale is not jeopardized by upsell products. Spec. ¶ 5. In addition, “[i]f multiple upsell opportunities are presented to the customer, the flow may complete the purchase transaction for each upsell opportunity before moving on to the next.” Spec. ¶ 5. Thus, each purchase is “locked in” to capture maximum value from the customer. Spec. ¶ 5. Accordingly, when considered as an ordered combination, we conclude the pending claims provide an inventive concept by the unconventional arrangement of generic components to yield a technological improvement.

For the reasons discussed *supra*, we are persuaded of Examiner error. Accordingly, we do not sustain the Examiner's rejection of claims 1–35 under 35 U.S.C. § 101.

Rejections under pre-AIA 35 U.S.C. § 103(a)

- a. Claims 1–8, 11, 12, 15–18, 20–22, 24, 32, and 35

In rejecting independent claims 1 and 15, the Examiner finds Gray teaches, *inter alia*, responsive to determining that a selection to either accept or decline an upsell product purchase offer has not been received, refraining from sending the receipt page until at least one interaction with the upsell pitch page is received. Non-Final Act. 11–12 (citing Gray ¶¶ 37–38, 44, 48, Figs. 6, 11); Ans. 4–5. Alternatively, the Examiner concludes that in light of the Board's precedential decision in *Ex parte Schulhauser*, Appeal No. 2013-007847, 2016 WL 6277792, at *3–6 (PTAB April 28, 2016), under a

broadest reasonable interpretation, the disputed limitation is a conditional step in the method claims and, as such, the method need not invoke the conditional step. Ans. 3–4. Accordingly, the Examiner determines that evidence of obviousness need not be presented for the conditional limitation. Ans. 3–4; *see also Schulhauser*, 2016 WL 6277792, at *4 (“The Examiner did not need to present evidence of the obviousness of the remaining method steps of claim 1 that are not required to be performed under a broadest reasonable interpretation of the claim.”).

As an initial matter, Appellant asserts the disputed limitation (i.e., the last limitation of claim 1) is not conditional, but is always performed by the claimed method. Reply Br. 2–3. More specifically, Appellant argues that the step of refraining from sending the receipt page is always performed after the upsell pitch pages are presented to the customer. Reply Br. 2–3. In other words, after the upsell pitch pages have been presented to the customer, the receipt page for the purchased downloadable product is not sent to the customer (purchaser) until the customer interacts with the mechanisms (i.e., accept or decline) on the upsell pitch page(s).

We find Appellant’s explanation persuasive that the receipt page is not sent to the customer if the customer has not yet selected a mechanism on the upsell pitch page(s) to either accept or decline purchase of the upsell product. This step is not a conditional step and, therefore, the Examiner must present evidence that it is taught or suggested by the prior art.

Regarding the teaching of Gray, Appellant asserts that Gray, as relied on by the Examiner, fails to teach the last limitation of claim 1—i.e., responsive to determining that the customer has not accepted or declined purchasing the additional upsell product to refrain from sending the receipt

page (containing the link to download the downloadable product already purchased by the customer). Appeal Br. 6–10; Reply Br. 3–5. Rather, Appellant argues that Gray teaches treating inaction by the customer (i.e., not accepting or declining an offer to purchase an additional upsell product) as if the customer affirmatively declined the upsell offer.

We are unpersuaded of Examiner error.

Gray generally relates to upselling products in a computer network environment. *See* Gray, Title. In particular, Gray describes a multi-step method of selling involving the sale of a base product and, thereafter, the sale of one or more upsell products. Gray ¶ 12. As described in Gray, a customer selects an item for purchase, provides the necessary payment and shipping information, and completes the transaction to purchase the (base) product. *See* Gray ¶¶ 31–37. After the sale of the base product has been successfully completed, the system presents upsell products to the customer. Gray ¶ 38. Gray further teaches that pages presenting the upsell products (i.e., upsell product pitch pages) comprise mechanisms (e.g., buttons indicating “Yes Please” or “No Thank You”) to allow the user to accept or decline the purchase offer of the upsell products. Gray ¶ 38. Gray teaches that until the customer accepts, declines, or does not respond to the upsell product offer, a verification email message (i.e., receipt page) related to purchase of the base product is not sent to the customer. Gray ¶¶ 39–44, Figs. 1, 11. In other words, similar to Appellant’s explanation of the operation of the claimed method, Gray also teaches the verification email message (i.e., receipt page) is not sent to the customer until at least the customer has indicated via the mechanisms on the upsell product pitch page, or, additionally, until a timeout period has expired.

For the reasons discussed *supra*, we are unpersuaded of Examiner error. Accordingly, we sustain the Examiner's rejection of claim 1 under pre-AIA 35 U.S.C. § 103(a). For similar reasons, we also sustain the Examiner's rejection under pre-AIA 35 U.S.C. § 103(a) of independent claim 15, which recites commensurate limitations and was not argued separately with particularity. *See* Appeal Br. 10; *see also* 37 C.F.R. § 41.37(c)(1)(iv). Further, we sustain the Examiner's rejection under pre-AIA 35 U.S.C. § 103(a) of claims 2–8, 11, 12, 16–18, 20–22, 24, 32, and 35, which depend directly or indirectly therefrom and were not argued separately. *See* Appeal Br. 10; *see also* 37 C.F.R. § 41.37(c)(1)(iv).

b. Claims 9, 10, 13, 14, 23, 25, 26–31, 33, and 34

Appellant asserts that the additional references cited by the Examiner (i.e., Utter, Angell, and Otto) fail to remedy the alleged deficiencies in the base combination of Gray and Bhambri with respect to independent claims 1 and 15. Appeal Br. 10–11. As discussed above, we are unpersuaded of Examiner error or deficiencies of Gray and Bhambri related to independent claims 1 and 15. Accordingly, we sustain the Examiner's rejections of dependent claims 9, 10, 13, 14, 25, 27–31, 33, and 34, which were not argued separately. *See* 37 C.F.R. § 41.37(c)(1)(iv).

CONCLUSION

We reverse the Examiner's decision rejecting claims 1–35 under 35 U.S.C. § 101.

We affirm the Examiner's decision rejecting claims 1–18 and 20–35 under pre-AIA 35 U.S.C. § 103(a).

DECISION SUMMARY

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–35	101	Eligibility		1–35
1–8, 11, 12, 15–18, 20–22, 24, 32, 35	103(a)	Gray, Bhambri	1–8, 11, 12, 15–18, 20–22, 24, 32, 35	
23, 26	103(a)	Gray, Bhambri, Utter	23, 26	
9, 10, 13, 14, 25, 27, 29–31	103(a)	Gray, Bhambri, Angell	9, 10, 13, 14, 25, 27, 29–31	
28	103(a)	Gray, Bhambri, Angell, Utter	28	
33, 34	103(a)	Gray, Bhambri, Angell, Otto	33, 34	
Overall Outcome			1–18, 20–35	19

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. § 41.50(f).

AFFIRMED IN PART