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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SERGIO COLLA, BILL LEUNG, TUAN NGUYEN,
NIHAL SINGH, and RAJESH SHENOY

Appeal 2019-002457
Application 14/706,015
Technology Center 2100

Before JAMES R. HUGHES, LINZY T. McCARTNEY, and
MICHAEL T. CYGAN, *Administrative Patent Judges*.

McCARTNEY, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant¹ seeks review under 35 U.S.C. § 134(a) of the Examiner's final rejection of claims 6–8, 10–17, 19, 20, 25–27, and 29–35. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ Appellant identifies the real party in interest as Alcatel-Lucent. Appeal Brief 1, filed July 16, 2018 (Appeal Br.).

BACKGROUND

This patent application concerns monitoring a data center. *See* Specification ¶¶ 2, 22, filed May 7, 2015 (Spec.). Claim 6 illustrates the claimed subject matter:

6. A system for monitoring a data center comprising:
 - a controller comprising a specially programmed processor operable to execute instructions stored in an associated memory to complete one or more integrated processes comprising,
 - receiving information from one or more non-virtual elements of the data center;
 - receiving information in the form of connection, status, and tunneling information from one or more configured agents associated with one or more configured virtual entities of a data center, the configured virtual entities consisting of virtual switches and virtual machines, with the tunneling information defining one or more newly discovered connections between a pair of instantiated virtual entities; and
 - parsing the received information from the one or more non-virtual elements to generate, in combination with the received information from the one or more configured agents, a vertical and horizontal mesh network topology of the data center, and to correlate the generated data center vertical and horizontal mesh network topology with one or more services supported by the data center.

Appeal Br. 16.

REJECTIONS²

Claims	35 U.S.C. §	References/Basis
6–8, 10–17, 19, 20, 25–27, 29–35	101	Eligibility
6–8, 10–17, 19, 20, 25–27, 29–35	103	Bird, ³ Bardgett ⁴

DISCUSSION

We have reviewed the Examiner’s rejections and Appellant’s arguments, and Appellant has not persuaded us that the Examiner erred. As consistent with the discussion below, we adopt the Examiner’s findings and conclusions on pages 2–17 of the Final Office Action mailed March 16, 2018 (Final Act.) and pages 4–16 of the Examiner’s Answer mailed November 30, 2018 (Ans.). We address these rejections in turn.

Section 101 Rejection

Section 101 of the Patent Act provides that “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof” is patent eligible. 35 U.S.C. § 101. But the Supreme Court has long recognized an implicit exception to this section: “Laws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014) (quoting *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)). To determine whether a claim falls within one of these excluded categories,

² The Examiner withdrew a rejection of claims 6–8, 10–17, 19, 20, 25–27 and 29–35 under § 112. Examiner’s Answer 3, mailed November 30, 2018.

³ Bird (US 7,657,545 B2; February 2, 2010).

⁴ Bardgett et al. (US 2015/0043378 A1; February 12, 2015).

the Court has set out a two-part framework. The framework requires us first to consider whether the claim is “directed to one of those patent-ineligible concepts.” *Alice*, 573 U.S. at 217. If so, we then examine “the elements of [the] claim both individually and ‘as an ordered combination’ to determine whether the additional elements ‘transform the nature of the claim’ into a patent-eligible application.” *Alice*, 573 U.S. at 217 (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 78, 79 (2012)). That is, we examine the claim for an “inventive concept,” “an element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.’” *Alice*, 573 U.S. at 217–18 (alteration in original) (quoting *Mayo*, 566 U.S. at 72–73).

The Patent Office has revised its guidance about this framework. *See* 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Revised Guidance”). Under the Revised Guidance, to decide whether a claim is directed to an abstract idea, we evaluate (1) whether the claim recites subject matter that falls within one of the abstract idea categories listed in the Revised Guidance, and if so, (2) whether the claim fails to integrate the recited abstract idea into a practical application. *See* Revised Guidance, 84 Fed. Reg. at 51, 54; *see also* USPTO, October 2019 Update: Subject Matter Eligibility at 1–2, 10–15, https://www.uspto.gov/sites/default/files/documents/peg_oct_2019_update.pdf (“October SME Update”) (providing additional guidance on determining whether a claim recites a judicial exception and integrates a judicial exception into a practical application). If the claim is directed to an abstract idea, as noted above, we then determine whether the claim has an inventive concept. The Revised

Guidance clarifies that when making this determination, we should consider whether the additional claim elements add “a specific limitation or combination of limitations that are not well-understood, routine, conventional activity in the field” or “simply append[] well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality.” Revised Guidance, 84 Fed. Reg. at 56.

With this framework in mind, we turn to the Examiner’s rejection of claims 6–8, 10–17, 19, 20, 25–27, and 29–35 under § 101. Appellant argues these claims together, *see* Appeal Br. 3, so as permitted by 37 C.F.R. § 41.37(c)(1)(iv), we decide the appeal for this ground of rejection based on claim 6.

Directed To

The Revised Guidance explains that the abstract idea exception includes “mental processes,” that is, acts that people can perform in their minds or using pen and paper. *See* Revised Guidance, 84 Fed. Reg. at 52 & nn.14–15. The Examiner determined that claim 6 recites subject matter that falls within this category of abstract ideas. *See* Final Act. 3 (determining that claim 6 “fall[s] into the category of ‘an idea of itself’” because the claim is analogous to the patent-ineligible claims in *Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016)); *see also* USPTO, July 2015 Update: Subject Matter Eligibility at 5, <https://www.uspto.gov/sites/default/files/documents/ieg-july-2015-update.pdf> (explaining that the words “an idea of itself” refer to “an idea standing alone such as an uninstiated concept, plan or scheme, as well as a mental process”); October SME Update at 7 (explaining that the patent-ineligible claims in *Electric Power Group* are examples of claims that recite mental processes).

We agree. Claim 6 recites “receiving information from one or more non-virtual elements of the data center” and “receiving information in the form of connection, status, and tunneling information from one or more configured agents associated with one or more configured virtual entities of a data center” Appeal Br. 16. These limitations recite functions that the claimed invention performs—receiving certain information—but do not meaningfully limit how the claimed invention performs these functions. Given the broad wording of these limitations, they encompass, for example, people reading the recited information from a computer screen or a database. *See, e.g., CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1372 (Fed. Cir. 2011) (determining that a claim step “which requires ‘obtaining information about other transactions that have utilized an Internet address that is identified with the [] credit card transaction’—can be performed by a human who simply reads records of Internet credit card transactions from a preexisting database”); *see also Elec. Power Grp.*, 830 F.3d at 1353 (“[W]e have treated collecting information, including when limited to particular content (which does not change its character as information), as within the realm of abstract ideas.”). Even if these limitations did not encompass acts that people can perform in their minds or using pen and paper, these limitations alone would not make claim 6 patent eligible because they simply gather data. *CyberSource*, 654 F.3d at 1372 (“[E]ven if some physical steps are required to obtain information from the database . . . such data-gathering steps cannot alone confer patentability.”).

Claim 6 also recites

 parsing the received information from the one or more non-virtual elements to generate, in combination with the received information from the one or more configured agents, a

vertical and horizontal mesh network topology of the data center, and to correlate the generated data center vertical and horizontal mesh network topology with one or more services supported by the data center.

Appeal Br. 16. Like the receiving limitations, this limitation recites functions (specifically, parsing, generating, and correlating) without meaningfully limiting how the claimed invention performs these functions. This limitation is so broadly worded that it encompasses acts that people can perform mentally or using pen and paper. *See CyberSource*, 654 F.3d at 1373 (determining that a claim step “is so broadly worded that it encompasses literally *any* method for” performing the step, including “even logical reasoning that can be performed entirely in the human mind”); *Elec. Power Grp.*, 830 F.3d at 1354 (“[W]e have treated analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, as essentially mental processes within the abstract-idea category.”). For example, this limitation encompasses people mentally identifying network entities and connections (among other things) in information received from the non-virtual elements and configured agents and using the identified entities and connections to draw or picture a vertical and horizontal mesh network topology of a data center. This limitation also encompasses people mentally correlating (or drawing a correlation of) the topology with the one or more services supported by the data center.

Because claim 6’s receiving and parsing limitations encompass acts that people can perform in their minds or using pen and paper, claim 6 recites mental processes. *See CyberSource*, 654 F.3d at 1372 (determining that “unpatentable mental processes are the subject matter of” a claim when the claim’s “method steps can be performed in the human mind, or by a

human using a pen and paper”); *see also* October SME Update at 9 (“If a claim recites a limitation that can practically be performed in the human mind, the limitation falls within the mental processes grouping, and the claim recites an abstract idea. The use of a physical aid (i.e., the pen and paper) to help perform a mental step . . . does not negate the mental nature of this limitation.” (footnote call numbers omitted)). This is true even though claim 6 recites that a controller performs the functions recited in these limitations. “Courts have examined claims that required the use of a computer and still found that the underlying, patent-ineligible invention could be performed via pen and paper or in a person’s mind.” *Versata Dev. Grp., Inc. v. SAP Am., Inc.*, 793 F.3d 1306, 1335 (Fed. Cir. 2015). *See also CyberSource*, 654 F.3d at 1375 (“That purely mental processes can be unpatentable, even when performed by a computer, was precisely the holding of the Supreme Court in *Gottschalk v. Benson*.”); October SME Update at 8 (“Claims can recite a mental process even if they are claimed as being performed on a computer.”).

Appellant’s arguments have not persuaded us otherwise. Appellant contends that *Electric Power Group* does not apply to claim 6 and thus the claim is patent eligible. *See* Appeal Br. 7–9. This is so, according to Appellant, because (1) the Examiner provided no prior art showing that “the claimed features could possibly be carried out by the human mind”; (2) the written description establishes that the recited controllers are “‘specially programmed processors,’ not off-the-shel[f] general purpose computers”; and (3) “the claimed invention[] do[es] not purport to cover every potential solution to the stated problem of monitoring data [centers].” Appeal Br. 7–8.

We disagree. First, Appellant has not pointed to anything that required the Examiner to provide prior art showing that the claimed invention could be carried out in the human mind for the reasoning of *Electric Power Group* to apply to claim 6. Second, as discussed further below, the written description describes the recited “specially programmed processor” in a manner that shows that this element is a generic computer component. And even if the processor recited in claim 6 was more specific than a generic computer component, that would not make claim 6 patent eligible. *See BSG Tech LLC v. Buyseasons, Inc.*, 899 F.3d 1281, 1286 (Fed. Cir. 2018) (“We have consistently held, however, that claims are not saved from abstraction merely because they recite components more specific than a generic computer.”). Third, even assuming that claim 6 does not preempt all ways of monitoring data centers, “the absence of complete preemption does not demonstrate patent eligibility.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015).

Because we determine that claim 6 recites an abstract idea, we next consider whether claim 6 integrates the abstract idea into a practical application. *See Revised Guidance*, 84 Fed. Reg. at 51. In doing so, we evaluate the claim as a whole to determine whether the claim “integrate[s] the [abstract idea] into a practical application, using one or more of the considerations laid out by the Supreme Court and the Federal Circuit.” *Revised Guidance*, 84 Fed. Reg. at 55; *see also* October SME Update at 12 (discussing the practical application analysis). That is, we consider any additional elements recited in the claim along with the limitations that recite an abstract idea to determine whether the claim integrates the abstract idea into a practical application. *See* October SME Update at 12.

The Examiner found that claim 6 recites the following additional element: “a controller comprising a specially programmed processor operable to execute instructions stored in an associated memory to complete one or more integrated processes.” *See* Final Act. 3. The Examiner determined that this element encompasses “a generic CPU that is connected to RAM that stores instructions corresponding to the steps of the claims.” Final Act. 4. The Examiner determined that “[s]uch recitation of execution of abstract ideas, at high generality, on generic computers” does “not amount to significantly more than the identified abstract ideas.” Final Act. 4.

We agree. As determined by the Examiner—and not expressly disputed by Appellant—the only additional element recited in claim 1 is “a controller comprising a specially programmed processor operable to execute instructions stored in an associated memory to complete one or more integrated processes.” Appeal Br. 16. The written description describes the recited controller, processor, and memory in largely functional terms and provides few technical details about these components. For example, the written description discloses a “controller, such as a service aware management controller, for example, that includes one or more specially programmed processors (not shown) operable to execute instructions stored in one or more associated memories.” Spec. ¶ 32 (reference numbers omitted). The written description explains that “the description that follows will not repeatedly refer to the processors and memories though it should be understood that these components may be used to provide the functions and features embodied in exemplary controllers of the present invention.” Spec. ¶ 32; *see also* Spec. ¶ 58 (explaining that the disclosed invention may include “specially programmed processors operable to execute instructions

stored in one or more associated memories to complete one or more integrated processes related to the inventive functions, and provide the inventive features described herein as well as complete and provide functions and features that are well known to those skilled in the art”). Given the lack of implementation details in the written description for the recited controller, processor, and memory, these elements amount to generic computer components. *See, e.g., Intellectual Ventures I LLC v. Erie Indem. Co.*, 850 F.3d 1315, 1331 (Fed. Cir. 2017) (“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.”).

Claim 6 uses these generic computer components as tools to implement the recited abstract idea. *See* Appeal Br. 16. Using generic computer components in this way does not integrate the abstract idea into a practical application. *See, e.g., Alice*, 573 U.S. at 223–24 (“[W]holly 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.’” (second and third alterations in original) (quoting *Mayo*, 566 U.S. at 77)); *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1370 (Fed. Cir. 2015) (“Steps that do nothing more than spell out what it means to ‘apply it on a computer’ cannot confer patent-eligibility.”). Thus, considering the additional element recited in claim 6 along with the limitations that recite an abstract idea, both individually and combination, we determine that claim 6 does not integrate the recited abstract idea into a practical application.

Because claim 6 recites an abstract idea and does not integrate the abstract idea into a practical application, claim 6 is directed to an abstract idea.

Appellant asserts that Examiner erred because the Examiner “failed to interpret” claim 6 “in light of the specification” as required by *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016). Appeal Br. 5; *see also* Reply Brief 3–4, January 30, 2019 (Reply Br.). Appellant contends that “both the specification and [claim 6] set forth improvements to an existing technology, namely providing a more complete topology of a data center and correlating such a topology with services supported by the data center.” Reply Br. 11–12; *see also* Appeal Br. 6–7.

Appellant has not persuaded us that the Examiner erred. The Examiner explicitly considered claim 6 in light of the specification and determined that claim 6 was not directed toward an improvement in technology because the claim “merely presented abstract ideas of a solution [to] problems presented in the” written description “without reciting any particular implementation of the solution itself.” Final Act. 14–15; *see also* Ans. 4–10. We see no error in this determination. As discussed above, claim 6 recites a series of broadly worded, functional limitations. Claim 6 generally recites the functions that the claimed invention performs but does not meaningfully limit how the claimed invention performs those functions. The Federal Circuit has explained that this type of functional, result-oriented claim does not provide a technological improvement. *See, e.g., Interval Licensing LLC v. AOL, Inc.*, 896 F.3d 1335, 1345 (Fed. Cir. 2018) (determining that a claim component “encompasses a patent-ineligible abstract concept rather than an arguably technical improvement” because the component “simply demands the production of a desired result . . . without

any limitation on how to produce that result”); *In re Rosenberg*, No. 2019-2251, 2020 WL 2989246, at *3 (Fed. Cir. June 4, 2020) (determining that a claim recites “at best an improvement on an abstract process itself and not a technical improvement, given the broad, non-specific nature of the claim”); *In re Gopalan*, No. 2019-2070, 2020 WL 1845308, at *4 (Fed. Cir. Apr. 13, 2020) (determining that the claims at issue “do not embody a concrete solution to a problem because they lack the specificity required to transform a claim from one claiming only a result to one claiming a way of achieving it.” (quotation marks omitted)). And if Appellant relies on the written description to supply the details missing from claim 6, we cannot read limitations from the written description into the claim when determining what the claim is directed to. *See, e.g., ChargePoint, Inc. v. SemaConnect, Inc.*, 920 F.3d 759, 769 (Fed. Cir. 2019) (explaining that, when determining what a claim is “directed to,” “the specification cannot be used to import details from the specification if those details are not claimed”); *Am. Axle & Mfg., Inc. v. Neapco Holdings LLC*, 939 F.3d 1355, 1363 (Fed. Cir. 2019) (“We have repeatedly held that features that are not claimed are irrelevant as to step 1 or step 2 of the *Mayo/Alice* analysis.”); *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1149 (Fed. Cir. 2016) (“The § 101 inquiry must focus on the language of the Asserted Claims themselves.”).

Inventive Concept

Finally, we consider whether claim 6 has an inventive concept, that is, whether the claim has additional elements that “transform the nature of the claim’ into a patent-eligible application.” *Alice*, 573 U.S. at 217 (quoting *Mayo*, 566 U.S. at 78, 79). This requires us to evaluate whether the additional claim elements add “a specific limitation or combination of

limitations that are not well-understood, routine, conventional activity in the field” or “simply append[] well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality.”

Revised Guidance, 84 Fed. Reg. at 56.

As discussed above, the only additional element recited in claim 6 is “a controller comprising a specially programmed processor operable to execute instructions stored in an associated memory to complete one or more integrated processes.” Appeal Br. 16. As also discussed above, the written description describes the recited controller, processor, and memory in largely functional terms and provides few technical details about these components. *See, e.g.*, Spec. ¶¶ 32, 58. The written description thus shows that these components are well understood, routine, and conventional. *See In re Myers*, 410 F.2d 420, 424 (CCPA 1969) (“A specification is directed to those skilled in the art and need not teach or point out in detail that which is well-known in the art.”); *see also* 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).

Claim 6 simply employs these conventional computer components to perform the recited abstract idea. *See* Appeal Br. 16. This is not enough to

provide an inventive concept. *Alice*, 573 U.S. at 223 (“[T]he mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention.”); *Customedia Techs., LLC v. Dish Network Corp.*, 951 F.3d 1359, 1366 (Fed. Cir. 2020) (explaining that “the invocation of ‘already-available computers that are not themselves plausibly asserted to be an advance . . . amounts to a recitation of what is well-understood, routine, and conventional’” and determining that invoking a conventional component “is insufficient to supply the required inventive concept” (quoting *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1170 (Fed. Cir. 2018))). We therefore determine that claim 6 lacks an inventive concept.

Appellant contends that the Examiner erred because the Examiner failed to “present evidence that the features of the claimed inventions are widely prevalent in the relevant industry.” Reply Br. 1 (quotation marks omitted). Appellant did not raise this argument in the Appeal Brief, despite having the opportunity to do so. Appellant has therefore has forfeited this argument. *See* 37 C.F.R. §§ 41.37(c)(1)(iv), 41.41(b)(2).

In any case, as discussed above, the written description establishes that the recited additional element encompasses well understood, routine, and conventional components. As for the other limitations recited in claim 6, the Examiner was not required to show that these limitations are well understood, routine, and conventional because the other limitations form part of the recited abstract idea. *See, e.g., Bridge & Post, Inc. v. Verizon Commc’ns, Inc.*, 778 F. App’x 882, 892 (Fed. Cir. 2019) (“At *Alice* step two we assess ‘whether the claim limitations *other than* the invention’s use of the ineligible concept to which it was directed were well-understood, routine, and conventional.’” (quoting *BSG Tech LLC v. BuySeasons, Inc.*,

899 F.3d 1281, 1290 (Fed. Cir. 2018)); *BSG Tech*, 899 F.3d at 1290 (“[T]he relevant inquiry is *not* whether the claimed invention as a whole is unconventional or non-routine. . . . It 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.” (first emphasis added)). We thus find this argument unpersuasive.

Summary

We have considered Appellant’s remaining arguments and find them unpersuasive. For at least the above reasons, we sustain the Examiner’s rejection of claim 6 under § 101.

Section 103 Rejection

Claim 6 recites

 parsing the received information from the one or more non-virtual elements to generate, in combination with the received information from the one or more configured agents, a vertical and horizontal mesh network topology of the data center, and to correlate the generated data center vertical and horizontal mesh network topology with one or more services supported by the data center.

Appeal Br. 16. In the Appeal Brief, Appellant asserts that “[c]ontrary to the Examiner’s position, one skilled in the art would not equate Bird’s ‘mapping of a business infrastructure’ with the claimed parsing.” Appeal Br. 14 (citation omitted). Appellant contends that Bardgett does not “make up for” this deficiency because “Bardgett’s ‘logical topology with multiple layers’ . . . appears to be unrelated to the claimed parsing.” Appeal Br. 14. Appellant also contends that the Examiner “completely ignore[d] the

meaning of the claimed ‘generation of a vertical and horizontal mesh network topology of a data center’ as would be readily understood by those skilled in the art.” Appeal Br. 14

We find these arguments unpersuasive. Appellant does not explain why Bird’s mapping of a business infrastructure differs from the claimed parsing; Appellant simply asserts that they are different. *See* Appeal Br. 14. This unsupported assertion does not show that the Examiner erred. *Cf. In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011) (holding that “the Board reasonably interpreted Rule 41.37 to require more substantive arguments in an appeal brief than a mere recitation of the claim elements and a naked assertion that the corresponding elements were not found in the prior art”); 37 C.F.R. § 41.37(c)(1)(iv). For the same reason, Appellant’s conclusory arguments that Bardgett’s logical topology does not teach the recited parsing and that the Examiner ignored the meaning of the recited topology do not persuade us that the Examiner erred. Appellant presents no persuasive reasoning or evidence that shows the Bardgett’s logical topology does not teach the recited parsing. *See* Appeal Br. 14. And Appellant does not explain what the claimed topology means to one of ordinary skill in the art, let alone explain why the Examiner’s rejection fails to account for this meaning. *See* Appeal Br. 14. We thus find these arguments unpersuasive. *Lovin*, 652 F.3d at 1357; 37 C.F.R. § 41.37(c)(1)(iv).

In the Reply Brief, Appellant argues for the first time that the Examiner has not (1) explained how Bardgett’s teachings improve the accuracy of Bird’s mapping and (2) shown that there would have been a reasonable expectation of success in combining the teachings of Bird and Bardgett in the claimed manner. *See* Reply Br. 13–15. Appellant has

forfeited these arguments by failing to raise them in the Appeal Brief. *See* 37 C.F.R. §§ 41.37(c)(1)(iv), 41.41(b)(2). Appellant’s remaining arguments in the Reply Brief about Bird and Bardgett are largely conclusory, *see* Reply Br. 15–17, and thus unpersuasive.

For at least the above reasons, we sustain the Examiner’s rejection of claim 6 under § 103. Because Appellant has not presented separate, persuasive arguments for claims 7, 8, 10–17, 19, 20, 25–27, and 29–35, we also sustain the Examiner’s rejection of these claims under § 103.

CONCLUSION

Claims Rejected	35 U.S.C. §	References/Basis	Affirmed	Reversed
6–8, 10–17, 19, 20, 25–27, 29–35	101	Eligibility	6–8, 10–17, 19, 20, 25–27, 29–35	
6–8, 10–17, 19, 20, 25–27, 29–35	103	Bird, Bardgett	6–8, 10–17, 19, 20, 25–27, 29–35	
Overall Outcome			6–8, 10–17, 19, 20, 25–27, 29–35	

No 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