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UNITED STATES PATENT AND TRADEMARK OFFICE
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BEFORE THE PATENT TRIAL AND APPEAL BOARD
_____

Ex parte DAVID CONTRERAS, ROBERT C. SIZEMORE, and
STERLING R. SMITH
_____

Appeal 2019-002601
Application 14/507,919
Technology Center 3600
_____

Before JEFFREY N. FREDMAN, JOHN G. NEW, and
RACHEL H. TOWNSEND, *Administrative Patent Judges*.

FREDMAN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal[1,2] under 35 U.S.C. § 134(a) involving claims to software for implicit duration calculations and similarity comparisons in question answering systems. The Examiner rejected the claims as reciting non-statutory subject matter. We have jurisdiction under 35 U.S.C. § 6(b).

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[1] We use the word "Appellant" to refer to "applicant" as defined in 37 C.F.R. § 1.42. Appellant identifies the Real Party in Interest as International Business Machines Corporation (*see* Appeal Br. 2).

[2] We have considered and herein refer to the Specification of Oct. 7, 2014 ("Spec."); Final Office Action of Apr. 2, 2018 ("Final Act."); Appeal Brief of Sept. 4, 2018 ("Appeal Br."); Examiner's Answer of Dec. 12, 2018 ("Ans."); and Reply Brief of Feb. 12, 2019 ("Reply Br.").

We affirm.

Statement of the Case

Background

"[H]umans are currently inundated and overwhelmed with the amount of information available to them . . . QA [Question and Answer] systems provide automated mechanisms for searching through large sets of sources of content, e.g., electronic documents, and analyze them with regard to an input question" (Spec. ¶ 2). "For example, in the medical domain, doctors often make clinical notes regarding the patients that they treat . . . . While there are explicit dates/times associated with such notes, durations are not generally explicitly stated in such documents" (*id.* ¶ 15). "However, durations may be important to know in order to make [medical] decisions" (*id.*). The Specification teaches "automated mechanisms for analyzing dates/times in different portions of one or more documents, as well as their associated text, utilizing natural language processing techniques, to calculate implicit durations in the documents" (*id.* ¶ 17).

The Claims

Claims 11–17 and 20–28 are on appeal. Independent claim 11 is representative and reads as follows:

> 11. A computer program product comprising a computer readable storage medium having a computer readable program stored therein, wherein the computer readable program comprises instructions, which when executed on a processor of a computing device, causes the computing device to implement a question answering system which operates for performing a duration-based operation, wherein the computer readable program causes the computing device to:
>
> receive, by the question answering system, an input question from a requesting user in a natural language form, wherein the question is related to a medical treatment or

medical condition;

receive, by an implicit duration engine executing within the question answering system, at least one medical document having a plurality of associated dates and/or times and medical concepts associated with the dates and/or times, wherein the at least one medical document does not explicitly specify a duration between the dates and/or times medical concepts;

identify one or more similar medical concepts from the medical concepts in the at least one medical document, wherein the similar medical concept are determined to be similar based on a predetermined degree of similarity;

correlate, by implicit duration analysis logic executing within the implicit duration engine, the dates and/or times associated with the identified one or more similar concepts in the at least one medical document;

calculate, by implicit duration comparison logic executing within the implicit duration engine, for the correlated dates and/or times, an implicit duration for each similar medical concept based on the dates and/or times, wherein the implicit duration for each similar medical concept is implicit in the at least one medical document but not explicitly specified in the at least one medical document;

associate, by the implicit duration comparison logic, each similar medical concept with its corresponding implicit duration;

annotate, by implicit duration annotation logic executing within the implicit duration engine, each document in the at least one medical document with an implicit duration annotation that specifies the implicit duration for each similar medical concept identified in the at least one medical document;

generate, by the question answering system, a plurality of candidate answers to the input question, wherein the generation comprises accessing a knowledgebase of answers to determine the plurality of candidate answers corresponding to the question, wherein each candidate answer has an associated one or more duration criteria;

score the plurality of candidate answers to achieve one or more candidate answers meeting a predetermined scoring threshold;

modify, by a hypothesis and evidence scoring stage of the

question answering system, the scoring of the one or more candidate answers for the input question based on a correspondence between the implicit duration specified in the implicit duration annotation for each concept and the one or more duration criteria associated with the one or more candidate answers;

rank, by a final confidence merging and ranking stage of the question answering system, the one or more candidate answers based on the modified scoring to form a ranked set of candidate answers; and

present, by the question answering system, the ranked set of candidate answers to the requesting user.

The Rejection

The Examiner rejected claims 11–17 and 20–28 under 35 U.S.C. § 101 as directed to an abstract idea (Final Act. 2–7).

The Examiner finds the claims are

analogous to the court-identified abstract idea(s) of (1) receiving information, characterizing the information based on identifiers, and communicating the characterization or (2) collecting information, analyzing it, and displaying certain results of the collection and analysis and do not, when either view[ed] alone or in an ordered combination, add anything significantly more than the abstract idea(s).

(Final Act. 7).

Appellant contends "the present claims recite an improvement to computer-related technology with regard to performing duration-based operations in a question answering, system. This is not simply an abstract idea, but is an improvement rooted in computer technology and directed to solving a problem in the software arts" (Appeal Br. 6–7).

Principles of Law

An invention is patent-eligible if it claims a "new and useful process,

machine, manufacture, or composition of matter." 35 U.S.C. § 101. However, the Supreme Court has long interpreted 35 U.S.C. § 101 to include implicit exceptions: "[l]aws of nature, natural phenomena, and abstract ideas" are not patentable. *See, e.g.*, *Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208, 216 (2014).

In determining whether a claim falls within an excluded category, we are guided by the Supreme Court's two-step framework, described in *Mayo* and *Alice*. *Alice*, 573 U.S. 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 therefore 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) 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 water-proof 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))).

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

the claim to determine whether it contains an 'inventive concept' sufficient to 'transform' the claimed abstract idea into a patent-eligible application." *Alice*, 573 U.S. at 221 (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.* (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.*

The United States Patent and Trademark Office published revised guidance on the application of 35 U.S.C. § 101. USPTO's *2019 Revised Patent Subject Matter Eligibility Guidance* ("Revised Guidance").[3] Under the Guidance, in determining what concept the claim is "directed to," we first look to whether the claim recites:

> (1) any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human activity such as a fundamental economic practice, or mental processes) (Revised Guidance Step 2A, Prong 1); and

> (2) additional elements that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h)) (Revised Guidance Step 2A, Prong 2).

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, do we then look to whether the claim contains an "'inventive concept' sufficient to 'transform'" the claimed judicial exception into a patent-eligible application of the judicial exception.

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[3] *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50–57 (January 7, 2019).

Alice, 573 U.S. at 221 (quoting *Mayo*, 566 U.S. at 82). In so doing, we thus consider whether the claim:

> (3) adds a specific limitation beyond the judicial exception that are not "well-understood, routine and 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.

(Revised Guidance Step 2B). *See* Guidance, 84 Fed. Reg. at 54–56.

Analysis

Applying the Revised Guidance to the facts on this record, we find that Appellant's claims 11–17 and 20–28 are directed to patent-ineligible subject matter. Because the same issues are present in each of the claims, we focus our consideration on representative claim 11. The same analysis applied below to claim 11 also applies to the other rejected claims.

A.   *Revised Guidance Step 2A, Prong 1*

The Revised Guidance instructs us first to determine whether any judicial exception to patent eligibility is recited in the claim. The Revised Guidance identifies three judicially-excepted groupings identified by the courts as abstract ideas: (1) mathematical concepts, (2) certain methods of organizing human behavior such as fundamental economic practices, and (3) mental processes.

Claim 11 reasonably falls within one of the three of the judicially-excepted groupings listed in the Revised Guidance: mental processes of determining durations in medical records.

The Federal Circuit has "recognize[d] that defining the precise abstract

idea of patent claims in many cases is far from a 'straightforward' exercise." *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1150 (Fed. Cir. 2016). However, "we continue to 'treat[] analyzing information by steps people [could] go through in their minds, or by mathematical algorithms, without more, as essentially mental processes within the abstract-idea category.'" *Id.* at 1146. The Federal Circuit has recognized that "a claim for a *new* abstract idea is still an abstract idea." *Id.* at 1151. It is well established that mental processes are abstract ideas. *CyberSource* instructs that "a method that can be performed by human thought alone is merely an abstract idea and is not patent-eligible under § 101." *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1373, 1375 (Fed. Cir. 2011) ("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*.").

Claim 11 implements on a machine the types of mental analyses performed by a physician considering a patient's medical records. Indeed, we determine "with the exception of generic computer implemented steps, there is nothing in the claims themselves that foreclose them from being performed by a human, mentally or with pen and paper." *Intellectual Ventures I LLC v. Symantec Corp.,* 838 F.3d 1307, 1318 (Fed. Cir. 2016). In particular, the physician, in considering medical treatments, reviews medical documents in natural language form for medical concepts such as symptoms, drugs or procedures, and/or test results, and determines the duration of time between medical events in the patient's record to determine what further treatment, if any, is required by the patient based on the medical concepts and the times between activities. The physician may have varying levels of confidence in the diagnosis, depending upon the particular fact pattern. As a simple

example, an OB/Gyn who reviews a patient's positive pregnancy test would reasonably expect that within about 40 weeks, a hospital visit for delivery of a newborn would be necessary, with reasonably high confidence. Indeed, Appellant acknowledges that a "human has the ability to intuit implicit durations in documents without the durations being implicitly indicated" (Appeal Br. 12). "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.* v. *SAP Am., Inc.,* 793 F.3d 1306, 1335 (Fed. Cir. 2015).

This understanding of claim 11 is consistent with the Specification, which teaches that "the mechanisms operate on documents that are patient medical histories and medical policy documents" (Spec. ¶ 20). The Specification explains that "the QA system operates to analyze an input question and generate a final response" where "user inputs, via a user interface, an input question for which the user wishes to obtain an answer" (*id.* ¶ 60). The next step "parses the input question using natural language processing (NLP) techniques to extract major features" following which the "queries are applied to one or more databases storing information" (*id.* ¶¶ 60, 62). Then "algorithms of various complexity may be used to generate scores for candidate answers and evidence" (*id.* ¶ 67).

We find the instant claims similar to those in *SmartGene*, where the Federal Circuit held that claims directed to "comparing new and stored information and using rules to identify medical options" did not satisfy *Alice* step one. *See SmartGene, Inc. v. Advanced Biological Labs., SA*, 555 F. App'x 950, 951–52, 955–56 (Fed. Cir. 2014) (nonprecedential). As in *SmartGene*, the instantly claimed steps do not rely on an inventive device or

technique for obtaining or displaying medical information, but rather recite undefined algorithms for mathematically manipulating naturally occurring data. *See id.* at 954 (holding claims were patent ineligible because they did "no more than call on a 'computing device,' with basic functionality for comparing stored and input data and rules, to do what doctors do routinely.").

Here, the claims recite steps of a computer program for analyzing medical information for specific durations and concepts within that information, which people could go through in their minds to determine and rank the most likely medical conditions, diagnoses, and then present those to the patient, which is a mental process within the abstract-idea category. Accordingly, we conclude that the steps of claim 11 recite the judicial exceptions of mental processes.

B. *Revised Guidance Step 2A, Prong 2*

Having determined that the claims are directed to a judicial exception, the Revised Guidance directs us to next consider whether the claims integrate the judicial exception into a practical application. Revised Guidance Step 2A, Prong 2. "[I]ntegration into a practical application" requires that the claim recite an additional element or a combination of elements, that when considered individually or in combination, "apply, rely on, or use the judicial exception in a manner that imposes a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception." Revised Guidance, 84 Fed. Reg. at 54.

We agree with the Examiner that a judicial exception is not integrated into a practical application when the claims are drawn to the mere use of "a computer as a tool to perform an abstract idea." Revised Guidance, 84 Fed. Reg. at 55; *see Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354

(Fed. Cir. 2016) (finding that "the focus of the claims is not on . . . an improvement in computers as tools, but on certain independently abstract ideas that use computers as tools"); *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335–36 (Fed. Cir. 2016) (determining whether the claims at issue were focused on a "specific asserted improvement in computer capabilities" or "a process that qualifies as an 'abstract idea' for which computers are invoked merely as a tool").

Here, there is no practical integration of the abstract idea. Other than the limitations directed to the abstract idea, discussed above, the invention is claimed at a very high level of generality and relies upon standard computing devices (*see* Spec. ¶ 54). We appreciate that simply because standard devices are used is not solely dispositive of practical integration.

However, in addition to using standard computer technology, the instant claims do not recite anything unconventional regarding the types of "natural language" questions (*see* Spec. ¶ 66, "What was the first movie?"); the types of medical documents being evaluated (*see id.* ¶ 15, "doctors often make clinical notes regarding the patients that they treat"); the medical concepts being identified (*see id.* ¶ 73, "resources 393 may comprise a dictionary of medical terms/phrases, e.g., the terms 'renal', 'autoimmune', 'carcinoma', and a plethora of other terms/phrases in the medical domain"); the algorithms used to determine and associate durations of the medical information or the algorithms used for generating, ranking, and scoring the information (*see id.* ¶ 38, "application of the queries using a variety of reasoning algorithms. There may be hundreds or even thousands of reasoning algorithms applied"). We note that the Specification does not clearly disclose or provide specific algorithms from among the thousands that may be applied.

Moreover, the Specification acknowledges known prior art computer based question answering systems such as "the IBM Watson™ QA system [that] receives an input question which it then parses to extract the major features of the question, that in turn are then used to formulate queries that are applied to the corpus of data" (Spec. ¶ 47).

Thus, claim 11 does not recite elements that integrate the abstract idea into a practical application that is more than the abstract idea itself. Instead, the claims recite conventional components that are used to apply the abstract algorithms.

> Appellant contends the

> Federal Circuit found that the claims in *Enfish* were not ones in which general-purpose computer components are added after the fact to a fundamental economic practice or mathematical equation, but were directed to a specific implementation of a solution to a problem in the software arts, and concluded that the *Enfish* claims were thus not directed to an abstract idea (under Step 2A).

(Appeal Br. 6). Appellant contends "the present claims recite an improvement to computer-related technology with regard to performing duration-based operations in a question answering, system" (*id.*).

We are unpersuaded by Appellant's reliance on *Enfish* (*see* Appeal Br. 7). *Enfish* explains that "the first step in the *Alice* inquiry in this case asks whether the focus of the claims is on the specific asserted improvement in computer capabilities . . . or, instead, on a process that qualifies as an 'abstract idea' for which computers are invoked merely as a tool." *Enfish*, 822 F.3d at 1335–36. Applied to claim 11, the claimed software product does not teach a technical improvement in a computer processor or even in a Question and Answer software system, but rather uses the computer as a tool to perform

data analysis on medical data (*see* claim 11, Spec. ¶ 2 "QA systems provide automated mechanisms for searching through large sets of sources of content, e.g., electronic documents, and analyze them with regard to an input question to determine an answer to the question and a confidence measure as to how accurate an answer is for answering the input question.") That is, the current claims simply use the computer and software as tools to perform a mental process routinely performed by a physician as discussed above. *See Elec. Power Grp.*, 830 F.3d at 1355 ("[M]erely selecting information, by content or source, for collection, analysis, and display does nothing significant to differentiate a process from ordinary mental processes.")

Appellant also contends that in *BASCOM* "the CAFC held that the claim limitations, taken as an 'ordered combination' under the second step of the Alice/Mayo analysis, represent significantly more than the individual abstract ideas and individual generic computing components and thus, are sufficient for patent eligibility under 35 U.S.C. § 101" (Appeal Br. 7). Appellant contends

> the claims are directed to an ordered combination of elements that set forth a technology-based solution to a computer-based problem, namely at least one memory comprising instructions which are executed by the at least one processor and configure the processor to implement a **question answering system** for categorizing a user providing a text input, the question answering system executing a **question answering pipeline** on the at least one processor of the data processing system, **a question and topic analysis stage** of the question answering pipeline; and **a hypothesis generation stage** of the question answering pipeline.

(Appeal Br. 8).

We are not persuaded by Appellant's arguments. In *BASCOM*, the Federal Circuit found the patent claimed "a technology-based solution (not an

abstract-idea-based solution implemented with generic technical components in a conventional way) to filter content on the Internet that overcomes existing problems with other Internet filtering systems." *BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1351 (Fed. Cir. 2016). Unlike *BASCOM*, claim 11 recites an abstract-idea-based solution, i.e., a mental process for analyzing medical data including time durations that uses a computer, but does not indicate or identify any unconventional components in the analysis, or indeed, any aspect that cannot be performed in the human mind.

While Appellant states that the ordered combination is "significantly more," we are not persuaded that the evidence of record supports this position because, as discussed above, the process is identical to that performed by an ordinary physician analyzing patient records. As the Examiner points out

> the problem of determining implicit durations in documents and answering questions based on that implicit duration is not a problem that was caused by the technological environment to which the claim is confined. It was a problem that was in existence prior to the computer and the computer is merely being used as a tool to implement the abstract idea . . . .

(Ans. 5). Therefore, unlike *BASCOM*, the invention at issue is not "a 'software-based invention[] that improve[s] the performance of the computer system itself.'" *BASCOM*, 827 F.3d at 1351.

Appellant contends "while the claims in *Finjan* do not recite application of the additional functionality, the instant claims go farther to recite the actual application of the new functionality of the annotated documents" (Appeal Br. 9).

We find this argument unpersuasive because the claims in *Finjan* "employ[] a new kind of file that enables a computer security system to do

things it could not do before. The security profile approach allows access to be tailored for different users and ensures that threats are identified before a file reaches a user's computer." *Finjan, Inc. v. Blue Coat Sys., Inc.*, 879 F.3d 1299, 1305 (Fed. Cir. 2018). Here, while the claims recite a specific abstract idea implemented in software, that software does not alter the computer itself, but rather falls into the category of methods "that can be performed by human thought alone . . . and is not patent-eligible under § 101." *CyberSource*, 654 F.3d at 1373, 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*.").

Therefore, on this record, we conclude that the ineligible subject matter in Appellant's claim 11 is not integrated into a practical application.

C. *Revised Guidance Step 2B*

Having determined that the judicial exception is not integrated into a practical application, the Revised Guidance requires us to evaluate the additional elements individually and in combination to determine whether they provide an inventive concept, such as a specific limitation beyond the judicial exception that is not well-understood, routine, conventional in the field, or simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception. *See* Revised Guidance, 84 Fed. Reg. 51.

Appellant contends "that the claimed invention does improve the computer itself, as the computer implements a question answering system which operates for performing a duration-based operation and the claimed invention improves the accuracy of the question answering system with respect to duration-based operations" (Appeal Br. 11). Appellant contends

"the problem relates to computer understanding of implicit durations in artificial intelligence (question answering). This problem could not have existed prior to the computer. Also, this problem is specific to computer artificial intelligence and not specific to the medical or business field" (*id.* at 12).

We find these arguments unpersuasive because the Federal Circuit has "held that section 101 [does] not embrace a process defined simply as using a computer to perform a series of mental steps that people, aware of each step, can and regularly do perform in their heads." *SmartGene*, 555 F. App'x at 954 (citing *CyberSource*, 654 F.3d at 1373). Appellant acknowledges that "humans have the ability to use intuition to understand implicit durations" (Appeal Br. 12). Thus, consistent with Appellant's own statement, the process of claim 11 is simply using a computer to perform mental steps that a human can, and does perform.

In *SmartGene*, the claim at issue guided therapeutic treatment regimens using knowledge bases with expert rules and other information. *See SmartGene*, 555 F. App'x at 951–52. As in *SmartGene*, the instant "claim does not purport to identify new computer hardware: it assumes the availability of physical components for input, memory, look-up, comparison, and output. Nor does it purport to identify any steps beyond those which doctors routinely and consciously perform." *Id.* at 955. "Whatever the boundaries of the 'abstract ideas' category, the claim at issue here involves a mental process excluded from section 101: the mental steps of comparing new and stored information and using rules to identify medical options." *Id.*

Moreover, in specifically addressing the issue of whether the claim elements excluding the abstract idea of determining durations in medical

records are well-understood, routine, conventional in the field, the evidence in the Specification itself demonstrates the routine nature of these elements. The Specification establishes that question and answer (QA) systems were well known (*see* Spec. ¶ 3); that electronic medical records including clinical notes with duration information were known (*see id.* ¶ 18); that computers, computer readable media, and computer components were well known (*see id.* ¶¶ 25–27, 58); that algorithms for QA systems were well known including scoring and ranking (*see id.* ¶¶ 38–39, 42–43, 47).

We therefore find that Appellant's claims do not require anything other than the use of conventional and well-understood techniques and equipment to analyze medical records for duration information according to the recited judicial exception. Accordingly, the preponderance of evidence of record supports the Examiner's finding that Appellant's claimed invention is directed to patent-ineligible subject matter. The rejection of the claims under 35 U.S.C. § 101 is affirmed.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
11–17, 20–28	101	Utility	11–17, 20–28	

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED