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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MICHAEL D. SHEPHERD, DENNIS F. QUEBE JR,
JING ZHOU, FAMING LI, JENNIE ECHOLS, JINHUI YAO,
and LINA FU

Appeal 2019-003169
Application 14/547,706
Technology Center 3600

Before ERIC S. FRAHM, JOYCE CRAIG, and MATTHEW J. McNEILL,
Administrative Patent Judges.

CRAIG, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 1–5, 7–12, 14–19, and 21–23. *See* Final Act. 1. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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 Conduent Business Services, LLC, Dallas, TX. Appeal Br. 3.

CLAIMED SUBJECT MATTER

The claims are directed to a system and method for automated analytic process flows to improve health outcomes and manage healthcare costs. Spec. Title, ¶ 4. Claim 7, reproduced below, is illustrative of the claimed subject matter:

7. A method, comprising:

acquiring medical data associated with patients' healthcare encounters with managed care organizations (MCOs) from a database comprising said medical data, using a processor, said medical data comprising relations between services provided to said patients by said MCOs and said healthcare encounters and patient demographics;

presenting, on a graphic user interface (GUI) operatively connected to said processor, analytical process suggestions based on predefined categories of concern for said MCOs, said predefined categories of concern comprising one or more of:

Emergency Department (ED) utilization,
Hospital Admission and Re-admissions,
Demographic Disparity in Care,
Service Utilization by Members with Chronic
Conditions,
Preventive Care, and
Network Adequacy;

enabling selection, on said GUI, of analytic processes and flows from an existing library of analytical processes for tracking said services provided by said MCOs, said existing library of analytical processes being stored in said database and comprising a plurality of analytic processes organized into analytic flows, said analytic processes and flows being based on clinical expertise, each analytic flow comprising a sequence of specific analytic processes to provide findings, predictions, and recommendations for specific questions in said predefined categories of concern for said MCOs, based on said medical data;

following a first analytic flow according to a category of concern selected on said GUI, using said processor, said first

analytic flow having a specific sequence of first analytic processes, the analytic processes of said first analytic flow automatically sending findings as input to subsequent analytic processes in said first analytic flow;

said processor performing said first analytic processes in said selected category of concern for said MCOs, using said medical data, and identifying relations between said services provided by said MCOs and said patients' healthcare encounters, based on said medical data;

said processor extracting first utilization statistics from said medical data with said first analytic processes and flows selected from said existing library of analytical processes;

said processor analyzing said first utilization statistics and determining information relevant to said healthcare encounters, based on said medical data;

said processor outputting, on said GUI, first results of said analyzing said first utilization statistics based on said information;

applying, using said GUI, pre-defined rules obtained from clinical experts, wherein the rules define branching points for flows between said analytic processes, said branching points directing compositions of analytic flows between said analytic processes based on available findings to generate a second analytic flow according to said category of concern selected on said GUI, said second analytic flow having a specific sequence of second analytic processes;

following said second analytic flow according to said category of concern selected on said GUI, using said processor, using said first results of said analyzing said first utilization statistics relevant to said healthcare encounters as input to said second analytic processes, the analytic processes of said second analytic flow automatically sending findings to subsequent analytic processes in said second analytic flow, said second analytic processes being in the same selected category of concern as said first analytic processes;

said processor performing said second analytic processes in said selected category of concern for said MCOs, using said medical data, and identifying relations between said services

provided by said MCOs and said healthcare encounters, based on said medical data; and
said processor extracting second utilization statistics from said medical data with said second analytic processes and flows selected from said existing library of analytical processes according to said pre-defined rules.

REJECTION

Claims 1–5, 7–12, 14–19, and 21–23 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to patent-ineligible subject matter. Final Act. 2–4.

ANALYSIS

Appellant argues the Examiner’s rejection of claim 7 under 35 U.S.C. § 101 as directed to patent-ineligible subject matter is in error. Appeal Br. 16–27. To the extent Appellant has not advanced separate, substantive arguments for particular claims, or other issues, such arguments are waived. 37 C.F.R. § 41.37(c)(1)(iv). Appellant argues claims 1–5, 7–12, 14–19, and 21–23 as a group. Appeal Br. 27. Given our discretion under 37 C.F.R. § 41.37(c)(1)(iv), we decide the § 101 rejection of claims 1–5, 7–12, 14–19, and 21–23 based on representative claim 7.

Principles of Law

“Whether a claim is drawn to patent-eligible subject matter is an issue of law that we review de novo.” *SiRF Tech., Inc. v. Int’l Trade Comm’n*, 601 F.3d 1319, 1331 (Fed. Cir. 2010).

An invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. However, the U.S. Supreme Court has long interpreted 35 U.S.C. § 101 to include implicit exceptions: “[I]aws of nature, natural phenomena, and

abstract ideas” are not patentable. *E.g.*, *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014).

In determining whether a claim falls within an excluded category, we are guided by the Court’s two-part framework, described in *Mayo* and *Alice*. *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 thus patent ineligible, include certain methods of organizing human activity, such as fundamental economic practices (*Alice*, 573 U.S. at 219–20; *Bilski*, 561 U.S. at 611); mathematical formulas (*Parker v. Flook*, 437 U.S. 584, 594–95 (1978)); and mental processes (*Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)). Concepts determined to be patent eligible include physical and chemical processes, such as “molding rubber products” (*Diamond v. Diehr*, 450 U.S. 175, 191 (1981)); “tanning, dyeing, making 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))).

In *Diehr*, the claim at issue recited a mathematical formula, but the Court held that “a claim drawn to subject matter otherwise statutory does not become nonstatutory simply because it uses a mathematical formula.”

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

If the claim is “directed to” an abstract idea, we turn to the second part of the *Alice* and *Mayo* framework, where “we must examine the elements of the claim to determine whether it contains an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Alice*, 573 U.S. at 221 (quotation marks omitted). “A claim that recites an abstract idea must include ‘additional features’ to ensure ‘that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].’” *Id.* (alterations in original) (quoting *Mayo*, 566 U.S. at 77). “[M]erely requir[ing] generic computer implementation[] fail[s] to transform that abstract idea into a patent-eligible invention.” *Id.*

In January 2019, the U.S. Patent and Trademark Office (USPTO) published revised guidance on the application of § 101. 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) (“2019 Revised Guidance”).² “All USPTO personnel are, as a matter of

² In response to received public comments, the Office issued further guidance on October 17, 2019, clarifying the 2019 Revised Guidance.

internal agency management, expected to follow the guidance.” *Id.* at 51; *see also* October 2019 Update at 1.

Under the 2019 Revised Guidance and the October 2019 Update, we first 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) (“Step 2A, Prong One”); and
- (2) additional elements that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h) (9th ed. Rev. 08.2017, Jan. 2018)) (“Step 2A, Prong Two”).³

2019 Revised Guidance, 84 Fed. Reg. at 52–55.

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, do we then look, under Step 2B, to whether the claim:

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

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

USPTO, *October 2019 Update: Subject Matter Eligibility* (the “October 2019 Update”) (available at https://www.uspto.gov/sites/default/files/documents/peg_oct_2019_update.pdf).

³ This evaluation is performed by (a) identifying whether there are any additional elements recited in the claim beyond the judicial exception, and (b) evaluating those additional elements individually and in combination to determine whether the claim as a whole integrates the exception into a practical application. *See* 2019 Revised Guidance - Section III(A)(2), 84 Fed. Reg. 54–55.

Step 1

Claim 7, as a method claim, falls within the process category of § 101. *See* 2019 Revised Guidance, 84 Fed. Reg. at 53–54 (citing MPEP §§ 2106.03, 2106.06).

Step 2A(i): Does the Claim Recite a Judicial Exception?

The Examiner determined that claim 7 is directed to “the concept of comparing new and stored data and using rules to identify options,” which is an idea of itself, and thus an abstract idea. Final Act. 3. The Examiner identified the following steps as part of the recited abstract idea: “acquiring medical data, presenting processes, enabling selection of analytical processes, following a first analytic flow, performing analytic processes, extracting statistics, analyzing statistics, outputting recommendations, applying pre-defined rules that define branching points, following second analytic flow, and extracting second statistics.” *Id.* at 2–3.

Consistent with Appellant’s description of the claims (*See, e.g., Spec.* ¶¶ 4–6), we find that the recited following a first analytic flow, performing analytic processes, extracting statistics, analyzing statistics, applying pre-defined rules that define branching points, following second analytic flow, and extracting second statistics describe concepts performed in the human mind, or practicably with pen and paper, that are fairly characterized as involving an observation, evaluation, judgment, or opinion, and which fall into the mental process category of abstract ideas. *See* 2019 Revised Guidance, 84 Fed. Reg. at 52.

Appellant argues that the Examiner erred because “the claimed process uses a specific sequence of processes of the first flow to obtain certain findings and uses the findings as input to a specific sequence of

processes of the second flow, according to specific rules, to obtain results,” and, thus, is not abstract. Appeal Br. 19–20 (emphasis omitted); Reply Br. 4.

We are not persuaded that the Examiner erred. The rule-based tasks identified above can be performed by the human mind or with pen and paper. The 2019 Revised Guidance explains that “mental processes” include acts that people can perform in their minds or using pen and paper, even if the claim recites that a generic computer component performs the acts. *See* 2019 Revised Guidance, 84 Fed. Reg. at 52 n.14 (“If a claim, under its broadest reasonable interpretation, covers performance in the mind but for the recitation of generic computer components, then it is still in the mental processes category unless the claim cannot practically be performed in the mind.”) (emphasis omitted); *see also Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1318 (Fed. Cir. 2016) (“[W]ith 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.”), quoted in 2019 Revised Guidance, 84 Fed. Reg. at 52 n.14.

Because we agree with the Examiner that the claim recites an abstract idea, we proceed to Prong Two of Step 2A to determine if the idea is integrated into a practical application, in which case the claim as a whole would not be “directed to” merely an abstract idea.

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

Because we determined that claim 7 recites a patent-ineligible concept, we next determine 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.

We use the term “additional elements” for claim features, limitations, or steps that the claim recites beyond the identified judicial exception. *See* 2019 Revised Guidance, 84 Fed. Reg. at 55 n.24. In claim 7, the additional elements include the “acquiring medical data,” “presenting,” “enabling selection,” and “outputting” steps, as recited in claim 7, as well as the recited “database,” “processor,” “library,” and “graphical user interface (GUI) operatively connected to said processor.”

The Examiner determined that none of the additional limitations is sufficient to amount to significantly more than the judicial exception because the additional computer elements are “described at a high level in the specification” and amount to no more than a generic computer. Final Act. 3.

We agree with the Examiner. Regarding the “processor” limitation, the Specification states that “[t]he computer 111 may comprise any form of processor.” Spec. ¶ 26; *see also* Spec. ¶ 7. The Specification also describes the recited “database” at a high level, describing that “[d]atabase 122 may be any organized collection of data operating with any type of database management system.” Spec. ¶ 27. The recited GUI is also described at a high level, as the Specification describes that “the user interface may comprise a graphic user interface (GUI).” Spec. ¶ 42. The library is also described at a high level, as the Specification describes that the library can be “on a computerized storage device operatively connected to the user interface,” without further explanation. Spec. ¶ 6.

Moreover, the data-collecting and data-presenting limitations constitute insignificant extra-solution activity. *See, e.g., Mayo*, 566 U.S. at 79; *Bilski*, 561 U.S. at 611–12; *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363–64 (Fed. Cir. 2015); *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1370 (Fed. Cir. 2011). As an example of insignificant extra-solution activity, the Federal Circuit has held that (1) presenting offers to potential customers and (2) gathering statistics concerning customer responses were “conventional data-gathering activities that d[id] not make the claims patent eligible.” *OIP Techs.*, 788 F.3d at 1363–64. Consistent with those decisions, the Manual of Patent Examining Procedure (“MPEP”) identifies “gathering data” as an example of insignificant pre-solution activity. MPEP § 2106.05(g).

Here, the “acquiring medical data” limitation amounts to mere data gathering, which is insignificant extra-solution activity and does not integrate the abstract idea into a practical application. *See* 2019 Revised Guidance, 84 Fed. Reg. at 55 n.31; MPEP § 2106.05(g). Similarly, the “presenting” and “enabling selection” steps amount to mere data gathering, as analytical process suggestions are presented on a GUI, on which the selection of analytic processes is enabled. *See OIP Techs.*, 788 F.3d at 1363–64. The “outputting” step simply outputs the results of analyzing the first utilization statistics. This limitation, therefore, does not impose meaningful limits on the claimed method and thus amounts to insignificant extra-solution activity that does not integrate the abstract idea into a practical application.

Appellant argues that claim 7 integrates the recited abstract idea into a practical application because claim 7 is directed to a specific implementation

of a solution to a problem. Appeal Br. 20 (citing *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016)). In particular, Appellant argues that claim 7 is directed to an innovation in computer technology, “namely performing analytic processes in a first analytic flow and using the output of those process as input to additional analytic process in a second analytic flow, in which the analytic flows use predefined rules to direct the flows.” Appeal Br. 21, 25–26.

Appellant’s arguments are not persuasive. Under the 2019 Revised Guidance, the focus in this step is on the additional elements and whether they, individually or in combination, integrate the abstract idea into a practical application. Here, Appellant’s arguments are based on the abstract idea itself, not the additional elements.

Moreover, Appellant’s claims are unlike the technology-based integrations cited by Appellant. *See* Appeal Br. 20. The *Enfish* court found the claims directed to “a specific improvement to the way computers operate, embodied in the self-referential table” (*Enfish*, 822 F.3d at 1336), and explained that the claims are “not simply directed to any form of storing tabular data, but instead are specifically directed to a self-referential table for a computer database” that functions differently than conventional databases (*id.* at 1337) (emphasis omitted).

The *Enfish* court distinguished between claims that focus on a specific improvement in computer capabilities, on the one hand, and an abstract idea that merely invokes computers as a tool, on the other. *Enfish*, 822 F.3d at 1336. This case is the latter. Appellant does not claim to have invented new networking hardware or software. Nor does Appellant claim to have invented HTTP header fields, user identifiers, encryption techniques, or any

other improvement in the network technology underlying its claims. The Specification states that the invention filled a need for automating analytic process flows to avoid “manually driven” analysis and workflow tools. Spec. ¶ 2. But this goal is in the abstract realm—“to improve health outcomes and manage healthcare costs”—not an improvement in networking or computer functionality. *See id.* None of these alleged improvements “enables a computer . . . to do things it could not do before.” *Finjan, Inc. v. Blue Coat Sys., Inc.*, 879 F.3d 1299, 1305 (Fed. Cir. 2018) (emphasis added). Such claims, whose focus is “not a physical-realm improvement but an improvement in wholly abstract ideas,” are not eligible for patenting. *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1168 (Fed. Cir. 2018).

In other words, automating analytic process flows, as in claim 7, “does not improve the functioning of the computer, make it operate more efficiently, or solve any technological problem.” *Trading Techs. Int’l, Inc. v. IBG LLC*, 921 F.3d 1378, 1384–85 (Fed. Cir. 2019). Rather, the claim simply “includes instructions to implement an abstract idea on a computer” and “does no more than generally link the use of a judicial exception to a particular technological environment or field of use.” 2019 Revised Guidance, 84 Fed. Reg. at 55; Ans. 3.

Appellant further alleges claim 7 is patent-eligible because its practice does not preempt practice by others. Appeal Br. 21–22, 24, 25, 27. While preemption may signal patent-ineligible subject matter, the absence of complete preemption “does not demonstrate patent eligibility . . . [w]here a patent’s claims are deemed only to disclose patent ineligible subject matter under the *Mayo* framework, as they are in this case, preemption concerns are fully addressed and made moot.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*,

788 F.3d 1371, 1379 (Fed. Cir. 2015); *see also OIP Techs.*, 788 F.3d at 1362–63 (“[T]hat the claims do not preempt all price optimization or may be limited to price optimization in the e-commerce setting do not make them any less abstract”); *see Ans.* 4.

Considering claim 7 as a whole, then, Appellant’s invention lacks a technical solution to a technical problem like the claims in these cases. Claim 7 as a whole merely uses instructions to implement the abstract idea on a computer or, alternatively, merely uses a computer as a tool to perform the abstract idea. Here, the additional limitation(s) do not integrate the judicial exception into a practical application. More particularly, the claims do not recite (i) an improvement to the functionality of a computer or other technology or technical field (*see* MPEP § 2106.05(a)); (ii) a “particular machine” to apply or use the judicial exception (*see* MPEP § 2106.05(b)); (iii) a particular transformation of an article to a different thing or state (*see* MPEP § 2106.05(c)); or (iv) any other meaningful limitation (*see* MPEP § 2106.05(e)). *See* 2019 Revised Guidance, 84 Fed. Reg. at 55. Rather, claim 7 recites an abstract idea as identified in Step 2A(i), *supra*, and none of the limitations integrates the judicial exception into a practical application.

Therefore, because the abstract idea is not integrated into a practical application, we conclude that the claim is directed to the judicial exception.

Step 2B — “Inventive Concept” or “Significantly More”

If the claims are directed to a patent-ineligible concept, as we conclude above, we proceed to the “inventive concept” step. For Step 2B we must “look with more specificity at what the claim elements add, in order to determine ‘whether they identify an “inventive concept” in the application of

the ineligible subject matter’ to which the claim is directed.” *Affinity Labs of Texas, LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1258 (Fed. Cir. 2016) (quoting *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016)). We look to see whether there are any “additional features” in the claims that constitute an “inventive concept,” thereby rendering the claims eligible for patenting even if they are directed to an abstract idea. *Alice*, 573 U.S. at 221. Those “additional features” must be more than “well-understood, routine, conventional activity.” *Mayo*, 566 U.S. at 79.

In the Reply Brief, with regard to step 2B of the § 101 analysis, Appellant essentially repeats arguments made in step 2A. Appellant argues that the claimed process “uses a specific sequence of processes of the first flow to obtain certain findings and uses the findings as input to a specific sequence of processes of the second flow, according to specific rules, to obtain results.” Reply Br. 5–6. Appellant also argues that claim 7 claims an innovation in computer technology. *Id.* at 6.

Appellant does not direct our attention to anything in the Specification that indicates the computer components perform anything other than well-understood, routine, and conventional functions, such as receiving data, looking up data in a database, attempting to execute commands, and presenting data. *See buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014) (“That a computer receives and sends the information over a network—with no further specification—is not even arguably inventive”); *In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d 607, 614 (Fed. Cir. 2016) (server that receives data, extracts classification information from the received data, and stores the digital images insufficient to add an inventive

concept); *Alice*, 573 U.S. at 225–26 (receiving, storing, sending information over networks insufficient to add an inventive concept).

Because the Specification describes the additional elements in general terms, without describing the particulars, we conclude the claim limitations may be broadly but reasonably construed as reciting conventional computer components and techniques, particularly in light of Appellant’s Specification, as cited above. *See Berkheimer Memo*⁴ § III.A.1; Spec. ¶¶ 6, 7, 26, 27, 42. We conclude claim 7 does not have an inventive concept because the claim, in essence, merely recites various computer-based elements along with no more than mere instructions to implement the identified abstract idea using the computer-based elements.

Because the claims are directed to a judicial exception without significantly more, we sustain the Examiner’s § 101 rejection of independent claim 7 and grouped claims 1–5, 8–12, 14–19, and 21–23, not argued separately with particularity.

DECISION

We affirm the decision of the Examiner rejecting claims 1–5, 7–12, 14–19, and 21–23.

⁴ “Changes in Examination Procedure Pertaining to Subject Matter Eligibility, Recent Subject Matter Eligibility Decision (*Berkheimer v. HP, Inc.*)” at 3 (Apr. 19, 2018) (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).

DECISION SUMMARY

Claims Rejected	35 U.S.C. §	Reference(s)/ Basis	Affirmed	Reversed
1-5, 7-12, 14-19, 21-23	101	Eligibility	1-5, 7-12, 14-19, 21-23	

TIME PERIOD FOR RESPONSE

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED