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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JEANETTE YODER and NIKOLAOS STAMATIS

Appeal 2020-000027
Application 14/643,293
Technology Center 3600

Before MURRIEL E. CRAWFORD, ANTON W. FETTING, and
ROBERT J. SILVERMAN, *Administrative Patent Judges*.

SILVERMAN, *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 rejecting claims 1–14 and 16–20. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM and include a new ground of rejection, pursuant to our authority under 37 C.F.R. § 41.50(b).

¹ We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. The Appellant identifies the real party in interest as Visa International Service Association. Appeal Br. 3.

ILLUSTRATIVE CLAIM

1. A computing system implementing a communication protocol, the computing system comprising:

at least one first computer configured as a centralized router, wherein the centralized router is connected to one or more destination account controllers and one or more source account controllers, and a set of readers are connected to the one or more destination account controllers; and

at least one second computer configured as a data storage, the data storage storing data linking a time limit to identification information of a plurality of destination accounts, wherein:

the centralized router is configured to receive a first authorization request via the one or more destination account controllers, the first authorization request originated from a first reader associated with a first destination account in the plurality of destination accounts, the first authorization request identifying a source identifier to request a resource transfer from a source account identified by the source identifier to the first destination account;

the data storage is configured to store data linking the time limit to the source identifier identified in the first authorization request based on the data linking the time limit with the identification information of the plurality of destination accounts;

the centralized router is further configured to receive a second authorization request via the one or more destination account controllers, the second authorization request originated from a second reader associated with a second destination account in the plurality of destination accounts, the second authorization request identifying the source identifier to request a resource transfer from the source account identified by the source identifier to the second destination account;

in response to a determination that the second authorization request is within the time limit linked to the source identifier in the data storage, the data storage is configured to increase an allocated resource of the source identifier, based on the data linking the time limit with the identification information of the plurality of destination accounts and the data linking the time limit to the source identifier;

the centralized router is further configured to receive a third authorization request via the one or more destination account controllers, the third authorization request originated from a third reader associated with a third destination account in the plurality of destination accounts to request a requested resource identified in the third authorization request to be transferred from the source account identified by the source identifier to the third destination account; and

from the third authorization request, the centralized router is further configured to

determine an adjusted resource from the requested resource and the allocated resource of the source identifier, based on the data linking the time limit with the identification information of the plurality of destination accounts and the data linking the time limit to the source identifier,

transmit a fourth authorization request, that replaces the third authorization request, to a source account controller of the source account identified by the source identifier to request a transfer of the adjusted resource from the source account to the third destination account, and

route a response to the fourth authorization request from the source account controller to the third reader via the one or more destination account controllers.

REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Yoder et al. (hereinafter “Yoder”)	US 2012/0066064 A1	Mar. 15, 2012
Okerlund	US 2013/0080239 A1	Mar. 28, 2013
Antonucci	US 2013/0231994 A1	Sept. 5, 2013

REJECTIONS

I. Claims 1–14 and 16–20 are rejected under 35 U.S.C. § 101 as ineligible subject matter.

II. Claims 1–6, 8–11, 14, and 16–20 are rejected under 35 U.S.C. § 103 as unpatentable over Yoder and Antonucci.

III. Claims 7, 12, and 13 are rejected under 35 U.S.C. § 103 as unpatentable over Yoder, Antonucci, and Okerlund.

FINDINGS OF FACT

The findings of fact relied upon, which are supported by a preponderance of the evidence, appear in the following Analysis.

ANALYSIS

Subject-Matter Eligibility

Under 35 U.S.C. § 101, an invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. Yet, subject matter belonging to any of the statutory categories may, nevertheless, be ineligible for patenting. The Supreme Court has interpreted § 101 to exclude laws of nature, natural phenomena, and abstract ideas, because they are regarded as the basic tools of scientific and technological work, such that including them within the domain of patent protection would risk inhibiting future innovation premised upon

them. *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013).

Of course, “[a]t some level, ‘all inventions . . . embody, use, reflect, rest upon, or apply’” these basic tools of scientific and technological work. *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 217 (2014). Accordingly, evaluating ineligible subject matter, under these judicial exclusions, involves a two-step framework for “distinguish[ing] between patents that claim the buildin[g] block[s] of human ingenuity and those that integrate the building blocks into something more, thereby transform[ing] them into a patent-eligible invention.” *Id.* (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 88–89 (2012) (internal quotation marks omitted)). The first step determines whether the claim is directed to judicially excluded subject matter (such as a so-called “abstract idea”); the second step determines whether there are any “additional elements” recited in the claim that (either individually or as an “ordered combination”) amount to “significantly more” than the identified judicially excepted subject matter itself. *Id.* at 217–18.

In 2019, the USPTO published revised guidance on the application of § 101, in accordance with judicial precedent. *See* 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50, 52 (Jan. 7, 2019) (“2019 Revised Guidance”). Under the 2019 Revised Guidance, a claim is “directed to” an abstract idea, only if the claim recites any of (1) mathematical concepts, (2) certain methods of organizing human activity, and (3) mental processes — without integrating such abstract idea into a “practical application,” i.e., without “apply[ing], rely[ing] on, or us[ing] 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.” *Id.* at 52–55. The considerations articulated in MPEP § 2106.05(a)–(c) and (e)–(h) bear upon whether a claim element (or combination of elements) integrates an abstract idea into a practical application. *Id.* at 55. A claim that is “directed to” an abstract idea constitutes ineligible subject matter, unless the claim recites an additional element (or combination of elements) amounting to significantly more than the abstract idea. *Id.* at 56.

Although created “[i]n accordance with judicial precedent” (*id.* at 52), the 2019 Revised Guidance enumerates the analytical steps differently than the Supreme Court’s *Alice* opinion. Step 1 of the 2019 Revised Guidance addresses whether the claimed subject matter falls within any of the statutory categories of § 101. *Id.* at 53–54. Step 2A, Prong One, concerns whether the claim at issue recites ineligible subject matter and, if an abstract idea is recited; Step 2A, Prong Two, addresses whether the recited abstract idea is integrated into a practical application. *Id.* at 54–55. Unless such integration exists, the analysis proceeds to Step 2B, in order to determine whether any additional element (or combination of elements) amounts to significantly more than the identified abstract idea. *Id.* at 56.

In the present Appeal, the Appellant does not analyze independent claims 9 and 10 separately from independent claim 1. *See* Appeal Br. 13–21. Accordingly, we treat the independent claims as a group, selecting claim 1 for analysis herein. *See* 37 C.F.R. § 41.37(c)(1)(iv).

As to Step 1 of the 2019 Revised Guidance, the Examiner determines that the claims in the Appeal are within the statutory categories of § 101.
Final 2.

With regard to the inquiries corresponding to Step 2A, Prong One, the Examiner identifies the following italicized limitations of claim 1:

1. A computing system implementing a communication protocol, the computing system comprising:

at least one first computer configured as a centralized router, wherein the centralized router is connected to one or more destination account controllers and one or more source account controllers, and a set of readers are connected to the one or more destination account controllers; and

at least one second computer configured as a data storage, the data storage storing data linking a time limit to identification information of a plurality of destination accounts, wherein:

the centralized router is configured to *receive a first authorization request* via the one or more destination account controllers, the first authorization request *originated from a first reader associated with a first destination account* in the plurality of destination accounts, the first authorization request *identifying a source identifier to request a resource transfer* from a source account identified by the source identifier to the first destination account;

the data storage is configured to *store data* linking the time limit to the source identifier identified in the first authorization request based on the *data linking the time limit with the identification information of the plurality of destination accounts*;

the centralized router is further configured to *receive a second authorization request* via the one or more destination account controllers, the second authorization request *originated from a second reader associated with a second destination account* in the plurality of destination accounts, the second authorization request identifying the source identifier to request a resource transfer from the source account identified by the source identifier to the second destination account;

in response to a *determination that the second authorization request is within the time limit* linked to the source identifier in the data storage, the data storage is configured to *increase an allocated resource* of the source identifier, based on the data linking the time limit with the identification information of the plurality of destination accounts and the data linking the time limit to the source identifier;

the centralized router is further configured to *receive a third authorization request* via the one or more destination account controllers, the third authorization request *originated from a third reader associated with a third destination account* in the plurality of destination accounts to request a requested resource identified in the third authorization request *to be transferred from the source account* identified by the source identifier to the third destination account; and

from the third authorization request, the centralized router is further configured to

determine an adjusted resource from the requested resource and the allocated resource of the source identifier, based on the data linking the time limit with the identification information of the plurality of destination accounts and the data linking the time limit to the source identifier,

transmit a fourth authorization request, that replaces the third authorization request, to a source account controller of the source account identified by the source identifier to request a transfer of the adjusted resource from the source account to the third destination account, and

route a response to the fourth authorization request from the source account controller to the third reader via the one or more destination account controllers.

See Final 3.

The Specification explains that the claims in the Appeal relate to various electronic financial transactions, such as: “applications in the transfer of digital tokens, digital rights, payment currencies, loyalty rewards, etc.” Spec. ¶ 76.

The Examiner regards the identified claim limitations as describing the “management of financial resources” — an abstract idea among the methods of organizing human activity that comprise judicial exceptions. Final 3. *See also* Answer 5–6.

The Appellant disputes the Examiner’s identification of the abstract idea, but does not state any basis for error in the Examiner’s analysis. Instead, the Appellant’s arguments (addressing alleged technological improvements (*see* Appeal Br. 14–15)) that purport to address Step 2A, Prong One, concern other aspects of the subject-matter eligibility analysis. We address these arguments in the appropriate respective part of the eligibility analysis.

The Appellant also contends that Figure 3 of the Specification “depicts a new arrangement in which source identifiers, destination identifiers, and time limits are utilized, all of which are recited by the independent claims.” *Id.* at 16. According to the Appellant: “This alone makes the claims eligible under the first prong of *Alice*.” *Id.* Yet, the Appellant does not indicate what aspects of Figure 3 are technologically embodied and employed in claim 1, or how such features would indicate subject-matter eligibility.

Therefore, we are not persuaded of error in the Examiner’s analyses corresponding to Step 2A, Prong One, of the 2019 Revised Guidance, as to independent claim 1.

Turning to Step 2A, Prong Two, unless a claim that recites a judicial exception (such as an abstract idea) “integrates the recited judicial exception into a practical application of that exception,” the claim is “directed to” the judicial exception. 2019 Revised Guidance, 84 Fed. Reg. at 53. The analysis of such an “integration into a practical application” involves “[i]dentifying . . . any additional elements recited in the claim beyond the judicial exception(s)” and “evaluating those additional elements individually and in combination to determine whether they integrate the exception into a practical application.” *Id.* at 54–55. Among the considerations “indicative that an additional element (or combination of elements) may have integrated the exception into a practical application” is whether “[a]n additional element reflects an improvement in the functioning of a computer, or an improvement to other technology or technical field.” *Id.* at 55 (footnote omitted). “[W]hether an additional element or combination of elements integrate[s] the exception into a practical application should be evaluated on the claim as a whole.” *Id.* at 55 n.24.

The Appellant argues that the claims provide “technological improvements” and “recite improvements in electronic payment processing systems.” Appeal Br. 14, 18. In support, the Appellant cites paragraph 52 of the Specification, which states: “[B]oth the source identifier (125) and the communication reference (133) are transmitted to the destination account controller (115) of the reader (109) **for improved efficiency.**” *Id.* at 18.

Yet, the Appellant does not explain the nature of the “improved efficiency” referenced in the Specification, how it might be achieved, or whether it relates to any additional element of claim 1. *See Answer 3* (“[T]he specification does not address efficiency metrics, neither the claims

nor the specification identifies elements beyond generic computer components performing generic computer functions, and there is no quantification of performance metrics enhancement.”) Indeed, claim 1 does not recite a “communication reference.”

The Appellant also contends that claim 1 employs the following “particular machines,” which integrate the abstract idea into a practical application: “a **centralized router**”; “wherein the centralized router is connected to **one or more destination account controllers** and **one or more source account controllers**”; “**a set of readers** are connected to the one or more destination account controllers”; and “at least one second computer **configured as a data storage.**” Appeal Br. 18.

However, the Appellant does not indicate why any of these identified items amounts to a “particular machine” in the meaning of the 2019 Revised Guidance, 84 Fed. Reg. at 55. Indeed, the identified elements are part of what the Examiner identifies as creating “general purpose computing systems and environments.” Answer 4 (citing Spec. ¶¶ 140–45, 149, 156, 157, 163–65, and 169–172).

Therefore, we are not persuaded of error in the rejection, with regard to analyses corresponding to Step 2A, Prong Two.

Proceeding to Step 2B of the 2019 Revised Guidance (84 Fed. Reg. at 56), a claim that recites a judicial exception (such as an abstract idea) might, nevertheless, be patent-eligible, if the claim contains “additional elements amount[ing] to significantly more than the exception itself” — i.e., “a specific limitation or combination of limitations that [is] not well-understood, routine, conventional activity in the field, which is indicative that an inventive concept may be present.” *See 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.”)

The Appellant argues that claim 1 recites a non-generic and non-conventional arrangement of components. Appeal Br. 19. The identified features encompass nearly the entirety of claim 1, including multiple limitations that coincide with limitations that the Examiner includes in the description of the abstract idea. *See id.* at 19–20. Such claim limitations cannot constitute “additional elements.” Accordingly, the Appellant does not identify any features of claim 1 that might amount to significantly more than the abstract idea, per the 2019 Revised Guidance. *See BSG Tech LLC v. BuySeasons, Inc.*, 899 F.3d 1281 1290 (Fed. Cir. 2018) (“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.”)

The Appellant argues that the dependent claims have not been examined and that “there are no substantive rejections” for the Appellant to address. Appeal Br. 21.

Yet, the Examiner explained that the dependent claims are directed to the abstract idea of the respective independent claim and, further, no dependent claim recites additional elements that give rise to patent-eligibility. Final 6–7, 23. In addition, the Appellant presents no explanation of any error in the rejection of the dependent claims.

In view of the foregoing, we are not persuaded of error in in the Examiner’s analyses corresponding to Step 2B of the 2019 Revised Guidance, such that we sustain the rejection of independent claims 1, 9, and 10, and dependent claims 2–8, 11–14, and 16–20.

Obviousness
(New Ground of Rejection)

The Appellant advances several arguments regarding the obviousness rejections. *See* Appeal Br. 22–29. As explained below, we impose a new ground of rejection, based on indefiniteness of the claim language, which necessitates reversing the obviousness rejections, *pro forma*. Except as stated below, we do not otherwise address the merits of the obviousness rejections.

1. *“a fourth authorization request, that replaces the third authorization request” (Independent Claims 1, 9, and 10)*

The Appellant argues that the independent claims were rejected in error, on account of the limitation “a fourth authorization request, that replaces the third authorization,” which appears in each of independent claims 1, 9, and 10. *See* Appeal Br. 23–25.

However, before a proper review of the rejection, under § 103, can be conducted, the subject matter encompassed by the claim must be reasonably understood without resort to speculation. *See In re Steele*, 305 F.2d 859, 862 (CCPA 1962) (a prior art rejection cannot be sustained if the hypothetical person of ordinary skill in the art would have to make speculative assumptions concerning the meaning of claim language); *see also In re Wilson*, 424 F.2d 1382, 1385 (CCPA 1970) (“If no reasonably definite meaning can be ascribed to certain terms in the claim, the subject matter does not become obvious — the claim becomes indefinite”).

During the Office’s evaluation, a proposed patent claim violates the definiteness requirement of 35 U.S.C. § 112(b), when the claim “contains words or phrases whose meaning is unclear” — i.e., “ambiguous, vague,

incoherent, opaque, or otherwise unclear in describing and defining the claimed invention.” *In re Packard*, 751 F.3d 1307, 1310–11 (Fed. Cir. 2014) (per curiam); *see also In re McAward*, No. 2015-006416, 2017 WL 3669566, at *3, *5–*6 (PTAB Aug. 25, 2017) (precedential).

Such a situation arises, in regard to the recited “a fourth authorization request, that replaces the third authorization” of independent claim 1 (and similar recitations of independent claims 9 and 10). The term “replace[]” does not appear in the Specification. Further, the Appellant’s reference to paragraphs 68–69 and Figure 6 of the Specification, as supporting the claim limitation (*see* Appeal Br. 8), does not adequately assist our understanding of this claim language.

Because the meaning of “a fourth authorization request, that replaces the third authorization” is unclear, independent claims 1, 9, and 10 (along with their dependent claims 2–8, 11–14, and 16–20) violate the definiteness requirement of 35 U.S.C. § 112(b).

Therefore, we do not assess the merits of the Examiner’s position, as to whether the prior art might teach or suggest “a fourth authorization request, that replaces the third authorization.” Rather, pursuant to our authority under 37 C.F.R. § 41.50(b), we reverse, *pro forma*, the claim rejections under § 103 and enter a new ground of rejection of the claims as being indefinite under 35 U.S.C. § 112(b). This determination does not reflect on the merits of the underlying obviousness rejections.

2. “*time limit*”
(*Independent Claims 1, 9, and 10*)

The Appellant argues that the Examiner erred in rejecting independent claims, because the cited references do not teach or suggest the claim

limitations reciting a “time limit.” *See* Appeal Br. 22–23, 25–28. However, the Appellant asserts the deficiency of each of the Yoder and Antonucci references, individually, whereas the Examiner relies upon the combined teachings of Yoder and Antonucci for the position that the identified “time limit” limitations would have been obvious to a person of ordinary skill in the art at the relevant time. *See* Final 6–9, Answer 7–8. “[O]ne cannot show non-obviousness by attacking references individually where, as here, the rejections are based on combinations of references.” *In re Keller*, 642 F.2d 413, 426 (CCPA 1981). In particular, the Examiner relies upon Antonucci for the disclosure of the “time limit” feature. *See* Final 9 (citing Antonucci ¶¶ 54, 62, Fig. 2).

The Appellant also argues that the “time limit” feature relates to several claim limitations and “it is unclear how the individual steps of the claims can be divided up” such that Antonucci may be cited for all these features, because Antonucci “merely mentions a time limit in a general way.” Appeal Br. 25.

Yet, the Appellant does not explain why the asserted disclosure of the claimed “time limit” feature “in a general way” (*id.*) might render Antonucci insufficient for the rejections. In any event, Antonucci refers to a “time limit rule” in the context of handling “loyalty points”:

Conversion rules 285 may include a points ratio rule, *time limit rule*, maximum point conversion rule, restrictions on conversion of general loyalty points into certain merchant dollars and/or any other restriction or rule which is followed in the conversion process.

Antonucci ¶ 54 (emphasis added). Antonucci’s disclosure corresponds to a similar implementation (loyalty program) described in the Specification:

“The loyalty program may run in a predetermined time period (e.g., 4 to 8 weeks, during the weekends of 3 weeks in the summer, etc.)” Spec. ¶ 81.

The Appellant also argues that there is no reason to combine the Yoder and Antonucci references, contending that “the motivation is not provided by any of the references.” Appeal Br. 28. The Appellant states:

The only stated motivation in the Office Action is that both Yoder and Antonucci “relate to financial services and accounts, consumer/merchant transactions, customer analytics and customer offers, with the motivation being to enhance management and access of consumer loyalty programs and accounts.”

Id. (quoting Final 9).

Yet, the Appellant omits, from the above quotation of the Final Office Action, the Examiner’s statement of the precise reason for combining the teachings of Yoder and Antonucci, by identifying the features of Antonucci that would have been perceived as beneficial to the Yoder system: “It would have been obvious to one of ordinary skill in the art to include in the transactions, payments, commerce and offers of Yoder, multi-merchant, rewards and incentives aspects of Antonucci.” Final 9.

In view of the foregoing, the Appellant’s arguments, relating to the “time limit” limitations, do not persuade us of error in the rejection of independent claims 1, 9, and 10, or any of the associated dependent claims.

3. Dependent Claim 2

The Examiner relies upon Yoder for teaching the limitations added by dependent claim 2:

at least one third computer configured as a portal connected to the data storage;

wherein the data storage is further configured to store, in association with the source identifier, a communication reference of a mobile device in response to the first authorization request; and

wherein the portal is configured to communicate, to the mobile device using the communication reference, a status of the allocated resource via a communication connection that does not go through the one or more destination account controllers.

See Final 9–10 (citing Yoder ¶¶ 42, 43, 46, 134, 135, 142, 145, 153–55, 158, 163, 164, 169, 170, 178, 198, 200, 450, Figs. 4, 8, 9).

According to the Appellant, the Examiner’s mappings are “inappropriate and, nevertheless, inapplicable in view of the cited portions of Yoder.” Appeal Br. 29.

The Appellant’s statement is not sufficiently precise to “explain why the examiner erred” (37 C.F.R. § 41.37(c)(1)(iv)) in rejecting claim 2.

4. Dependent Claim 3

The Examiner relies upon Yoder for teaching the limitations added by dependent claim 3:

wherein the centralized router is further configured to provide, in a response to the first authorization request, a portal address that is presented by the first reader; and

wherein the portal is further configured to receive, via the portal address provided in the response to the first authorization request, the communication reference of the mobile device to store the communication reference of the mobile device in association with the source identifier.

See Final 9–10 (citing Yoder ¶¶ 42, 43, 46, 90–94, 104–107, 135, 145, 153–55, 158, 163, 200, 308, 450, 472, Figs. 4, 8, 9, 15).

Disputing the rejection of dependent claim 3, the Appellant states:

[T]he Office Action glosses over the “portal address” feature and the language concerning storing “the communication reference of the mobile device in association with the source identifier.” The generic recitation to a portal and data storage, from Yoder, is simply not enough.

Appeal Br. 29.

Yet, the Appellant does not adequately explain what is intended by the assertion that the Examiner “glosses over” the identified claim features, or why Yoder’s disclosures are purportedly “generic” and “simply not enough.” *Id.*

5. Dependent Claim 4

Dependent claim 4 recites: “The computing system of claim 2, where the first authorization request includes the communication reference; and the response to the first authorization request identifies the time limit.”

In rejecting claim 4, the Examiner relies upon Antonucci (¶¶ 54, 62, Fig. 2) for the teaching “the time limit” and Yoder for teaching the other limitation. Final 10–11.

Disputing the rejection, the Appellant states:

The rejection for claim 4 is particularly glaring because claim 4 specifies, among other features, that “**the first authorization request identifies the time limit.**” There is absolutely no evidence of this in the art. The Office Action again cites to the same two paragraphs of Antonucci, discussed above, which do not come close to the specifically recited features of claim 4. Again, mere reference to a “time limit” in a reference does not permit the rejection of specifically claimed features involving a time limit.

Appeal Br. 29.

The above discussion, regarding the “time limit” limitations of the independent claims, also applies to the Appellant’s position on the rejection of dependent claim 4.

In addition, the Appellant improperly parses the language of claim 4. Claim 4 does include the words “the first authorization request identifies the time limit,” as the Appellant states in the quotation appearing on page 29 of the Appeal Brief. However, these words span distinct features of claim 4. Specifically, in claim 4, it is “the *response* to the first authorization request” that “identifies” the “time limit.” (Emphasis added). By contrast, the Appellant alleges that, in claim 4, it is “the *first authorization request*” that “identifies” the “time limit.” (Emphasis added).

Accordingly, the Appellant does not persuasively argue that the Examiner erred in rejecting dependent claim 4.

6. Dependent Claim 6

Dependent claim 6 recites: “The computing system of claim 1, wherein the third authorization request is determined to be within the time limit linked to the source identifier in the data storage, prior to the determining of the adjusted resource.”

Disputing the Examiner’s rejection of claim 6, the Appellant states:

Bizarrely, the Office Action does not even cite to Antonucci for this, relying entirely on Yoder. **Because the Office Action admits that Yoder does not disclose a time limit, the Office Action itself admits that this rejection is deficient.**

Appeal Br. 29.

The Appellant is mistaken. Like the other claims that recite the “time limit” feature, the Examiner explicitly cites Antonucci (¶¶ 54, 62, Fig. 2), in

combination with Yoder, as teaching the “time limit” feature of claim 6.
 Final 11.

Accordingly, the Appellant does not persuasively argue that the Examiner erred in rejecting dependent claim 6.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/ Basis	Affirmed	Reversed	New Ground
1-14, 16-20	101	Eligibility	1-14, 16-20		
1-6, 8-11, 14, 16-20	103	Yoder, Antonucci		1-6, 8-11, 14, 16-20	
7, 12, 13	103	Yoder, Antonucci, Okerlund		7, 12, 13	
1-14, 16-20	112(b)	Indefiniteness			1-14, 16-20
Overall Outcome			1-14, 16-20		1-14, 16-20

This Decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b). Section 41.50(b) provides that “[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review.” Section 41.50(b) also provides:

When the Board enters such a non-final decision, the appellant, within two months from the date of the decision, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

- (1) *Reopen prosecution.* Submit an appropriate amendment of the claims so rejected or new Evidence relating

to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the prosecution will be remanded to the examiner. The new ground of rejection is binding upon the examiner unless an amendment or new Evidence not previously of Record is made which, in the opinion of the examiner, overcomes the new ground of rejection designated in the decision. Should the examiner reject the claims, appellant may again appeal to the Board pursuant to this subpart.

(2) *Request rehearing.* Request that the proceeding be reheard under §41.52 by the Board upon the same Record. The request for rehearing must address any new ground of rejection and state with particularity the points believed to have been misapprehended or overlooked in entering the new ground of rejection and also state all other grounds upon which rehearing is sought.

Further guidance on responding to a new ground of rejection can be found in the MPEP § 1214.01.

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 37 C.F.R. § 41.50(b)