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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte HOWARD W. LUTNICK, JOSEPH NOVIELLO,
JONATHAN UMAN, and FREDERICK VARACCHI

Appeal 2020-001441
Application 12/760,763
Technology Center 3600

Before JOSEPH A. FISCHETTI, BIBHU R. MOHANTY, and
BRADLEY B. BAYAT, *Administrative Patent Judges*.

BAYAT, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant¹ appeals under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 41–60, which are all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ We use the term “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as BGC Partners, Inc. Appeal Br. 3.

STATEMENT OF THE CASE

Claimed Invention

Appellant's disclosure relates "to a vertical market in which incentives to generate revenue are provided to those members of the market that enter into an agreement to exchange goods and services directly between each other." Spec. ¶2.

Claims 41, 59, and 60 are the independent claims on appeal. Claim 41, reproduced below with added bracketed notations, is illustrative of the claimed subject matter.

41. A method of communication *over a communication network between an ownership processor and a trading processor and an interface of a workstation of a participant for communication with an electronic exchange*, the method comprising:

[(a)] receiving, *via the trading processor*, a request from *an input interface of a workstation of a participant* to trade goods and services on an *electronic exchange*, in which the *electronic exchange* comprises a market where tradable commodities are sold and bought, *in which the participant is using the workstation that is in electronic communication with the trading processor over the communication network*;

[(b)] issuing, *via the ownership processor*, at least one warrant to a participant based on an agreement, in which the warrant is convertible into shares in the *electronic exchange*;

[(c)] monitoring, *via the ownership processor*, the participant's performance on the marketplace over a period of time;

[(d)] receiving, *via the ownership processor*, a request to convert a portion of the plurality of warrants;

[(e)] determining, *via the ownership processor*, based on the participant's performance, a quantity of warrants to be converted into shares;

[(f)] determining, *via the trading processor*, a type of transaction is associated with an information service transaction, *transmitting to an interface of a workstation of a participant, a notification to indicate that a participant that provides the information service is entitled to information service revenues;*

[(g)] determining, *via the trading processor*, a type of transaction is associated with a voice service transaction and the voice service transaction is in a first annual period of agreement, *transmitting to an interface of a workstation of a participant, a notification to indicate that a participant that provides electronic service is entitled to a fee of voice transaction revenue that is net of voice transaction service provider's cost for salaries, bonuses and benefits;*

[(h)] determining, *via the trading processor*, a type of transaction is associated with a voice service transaction and the voice service transaction is not in a first annual period of agreement, *transmitting to an interface of a workstation of a participant, a notification to indicate that a participant that provides electronic service is entitled to a fee of voice transaction revenue;* and

[(i)] determining, *via the trading processor*, a type of transaction is associated with an *electronic* service transaction, *transmitting to an interface of a workstation of a participant, a notification to indicate that a participant that provides the electronic service transaction is entitled to electronic transaction revenue less a fee for providing clearance, settlement and fulfillment services, wherein communication with the ownership processor occurs over a first delivery path and communication with the trading processor occurs over a second delivery path, wherein the first delivery path is different than the second delivery path.*

Appeal Br. 19–20, Claims App. (emphasis added).

Rejections

Claims 41–60 are rejected under 35 U.S.C. § 101 because the claimed invention recites an abstract idea without significantly more. Final Act. 2–5.

Claims 41–60 are rejected under pre-AIA 35 U.S.C. § 102(a) as being anticipated by Lutnick (US 2003/0040961 A1, published Feb. 27, 2003). *Id.* at 5–10.

ANALYSIS

35 U.S.C. § 101

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. The Supreme Court, however, has long interpreted § 101 to include an implicit exception: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014).

The Supreme Court, in *Alice*, reiterated the two-step framework previously set forth in *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66 (2012), “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice Corp.*, 573 U.S. at 217. The first step in that analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts.” *Id.* If the claims are not directed to a patent-ineligible concept, e.g., an abstract idea, the inquiry ends. Otherwise, the inquiry proceeds to the second step where the elements of the claims are considered “individually and ‘as an ordered combination’” to determine whether there are additional elements that “‘transform the nature of the claim’ into a patent-eligible application.” *Id.* (quoting *Mayo*, 566 U.S. at 79, 78). This is “a search for an ‘inventive concept’—*i.e.*, an element or combination of elements that is ‘sufficient to ensure that the patent in

practice amounts to significantly more than a patent upon the [ineligible concept] itself.” *Id.* at 217–18 (alteration in original).

In rejecting the pending claims under 35 U.S.C. § 101, the Examiner determined claims 41–60 “allow[] for a vertical market where members participate in an agreement to trade directly with each other thereby saving potential revenue due to transaction costs, taxes and fees which is a fundamental economic practice.” Final Act. 3. The Examiner also determined the claims do “not include additional elements that are sufficient to amount to significantly more than the judicial exception. . . . [T]he additional elements . . . perform[ing] generic computer functions . . . amounts to no more than merely linking the use of the judicial exception to a particular technological environment or field of use.” *Id.* at 4–5.

Appellant argues independent claims 1, 59, and 60 as a group. Appeal Br. 9–15. Pursuant to 37 C.F.R. § 42.37(c)(1)(iv), we select claim 41 as representative for the group; thus, claims 59 and 60 stand or fall with claim 41.

*Step One of the Alice Framework (2019 Revised Guidance, Step 2A)*²

The first step in the *Alice* framework is to determine whether the claims at issue are “directed to” a patent-ineligible concept, e.g., an abstract

² The U.S. Patent and Trademark Office (the “USPTO”) published revised guidance for use by USPTO personnel in evaluating subject matter eligibility under 35 U.S.C. § 101. 2019 REVISED PATENT SUBJECT MATTER ELIGIBILITY GUIDANCE, 84 Fed. Reg. 50 (Jan. 7, 2019) (the “2019 Revised Guidance”). That guidance revised the USPTO’s examination procedure with respect to the first step of the *Alice* framework by (1) “[p]roviding groupings of subject matter that [are] considered an abstract idea”; and (2) clarifying that a claim is not “directed to” a judicial exception if the judicial exception is integrated into a practical application of that exception. *Id.* at 50.

idea. *Alice Corp.*, 573 U.S. at 217. This first step, as set forth in the 2019 Revised Guidance (i.e., Step 2A), is a two-prong test; in Step 2A, Prong 1, we look to whether the claim recites a judicial exception, e.g., one of the following three groupings of abstract ideas: (1) mathematical concepts; (2) certain methods of organizing human activity, e.g., fundamental economic principles or practices, commercial or legal interactions; and (3) mental processes. 2019 Revised Guidance, 84 Fed. Reg. at 54. If so, we next consider whether the claim includes additional elements, beyond the judicial exception, that “integrate the [judicial] exception into a practical application,” i.e., that 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 (“Step 2A, Prong 2”). *Id.* at 54–55. Only if the claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application do we conclude that the claim is “directed to” the judicial exception, e.g., an abstract idea.

We are not persuaded that the Examiner erred in concluding that claim 41 is directed to an abstract idea. The Federal Circuit has explained that “the ‘directed to’ inquiry applies a stage-one filter to claims, considered in light of the specification, based on whether ‘their character as a whole is directed to excluded subject matter.’” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016) (quoting *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015)). We ask whether the focus of the claims is on a specific improvement in relevant technology or on a process that itself qualifies as an “abstract idea” for which computers are invoked merely as a tool. *See id.* at 1335–36. Here, it

is clear from the Specification (including the claim language) that claim 41's focus is on an abstract idea, and not on any improvement to technology and/or a technical field.

Appellant's Specification is entitled "METHODS, APPARATUSES AND ARTICLE OF MANUFACTURES FOR INCENTIVIZING PARTICIPANTS TO TRADE ON A MARKETPLACE," and relates "to a vertical market in which incentives to generate revenue are provided to those members of the market that enter into an agreement to exchange goods and services directly between each other." Spec. ¶ 2. The Specification in the Abstract section describes the invention as:

A method, apparatus, and article of manufacture for incentivizing a plurality of participants to exchange goods or services on a marketplace. In one embodiment, at least one warrant is issued a participant who trades on the marketplace. The warrant is issued in accordance to an agreement among the plurality of participants. The warrant provides the participant with a right for converting the warrant into at least one ownership share of the marketplace. The right is conditioned on the participant's performance on the marketplace.

The claimed invention incentivizes participants to exchange goods and services on its marketplace by agreeing to trade directly with members of the marketplace in exchange for warrants or rewards, and determines the quantity of warrants to be converted to ownership shares based on the participant's performance on the marketplace. In other words, participants are incentivized to generate revenue because "[p]ortions of the revenues generated by all of the participants of the agreement may be paid to the participants based on percent-ownership of the market." Spec. ¶ 7.

To that end, claim 41 recites a method of communication comprising:
(a) receiving a request from a participant to trade goods and services on an

exchange; (b) issuing at least one warrant to a participant based on an agreement; (c) monitoring the participant's performance on the marketplace over a period of time; (d) receiving a request to convert a portion of the warrants; (e) determining a quantity of warrants to be converted into shares; (f) determining a type of transaction is associated with an information service transaction; (g) determining a type of transaction is associated with a voice service transaction and the voice service transaction is in a first annual period of agreement; (h) determining a type of transaction is associated with a voice service transaction and the voice service transaction is not in a first annual period of agreement; and (i) determining a type of transaction is associated with an service transaction. *See Claim 1 supra.*

Under the broadest reasonable interpretation, the above recitations of steps (a)–(i) describe a method of organizing human activity identified under the 2019 Revised Guidance as commercial or legal interactions, which include agreements in the form of contracts. 2019 Revised Guidance, 84 Fed. Reg. at 52. These steps describe a marketplace receiving a request from a participant to trade goods and services on its exchange (step (a)), and based on an agreement or contract with the participant to exchange goods or services of a vertical market, at least one warrant is issued to the participant (step (b)), the participant's performance on the marketplace is monitored over a period of time (step (c)), and upon receiving a request to convert a portion of the warrants (step (d)), a quantity of warrants to be converted into shares is determined based on the participant's performance (step (e)). *See Spec. ¶¶ 21–24.*

Steps (f)–(i) are actions taken to determine if a type of transaction is associated with: “an information service transaction” (step (f)), “a voice

service transaction” in a first annual period of the agreement (step (g)), “a voice service transaction” not in the first annual period (step (h)), and “an electronic service transaction” (step (i)). These steps can be practically performed in the human mind by determining and comparing the type of transaction to the participant’s entitlements under the agreement for each transaction. Such mental processes have been determined to be an abstract idea. *See* 2019 Revised Guidance 84 Fed. Reg. at 52 (“Mental processes—concepts performed in the human mind (including an observation, evaluation, judgment, opinion.”). Notably, each of these steps is performed to notify if the participant is entitled to any revenues or fees under the agreement.

Accordingly, we conclude those portions of steps (a)–(i) recite an abstract idea. Having concluded that claim 41 recites a judicial exception, *i.e.*, an abstract idea (Step 2A, Prong 1), we next consider whether the claim recites additional elements that integrate the judicial exception into a practical application (Step 2A, Prong 2). 2019 Revised Guidance, 84 Fed. Reg. at 51. When a claim recites a judicial exception and fails to integrate the exception into a practical application, the claim is “directed to” the judicial exception. *Id.* at 55.

The additional elements recited in claim 41, beyond the abstract idea, are an “ownership processor, a trading processor, an interface of a workstation, and a memory,” which the Examiner finds (Final Act. 4) are disclosed in the Specification at a high degree of generality, *i.e.*, as generic computer components (*see, e.g.*, Spec. ¶¶ 19–23). For example, the Specification indicates that such components include:

An illustrative electronic trading system 100 of an incentive-based vertical market in accordance with the present invention is shown in FIG. 1. Illustrative trading system 100 may include an ownership processor 102, a trading processor 104, and several workstations 106. Electronic trading system 100 may include any hardware, software, network infrastructure, or any other suitable components that may be used to effect transactions on or through the vertical market.

Workstations 106 may be used to effect transaction on or through the vertical market. Workstations 106 may be implemented on any suitable hardware. Suitable hardware may include personal computers, servers, or any other suitable hardware that includes a processor. Workstations 106 may be used by the participants of the agreement. For example, the workstation 106 labeled workstation A may be used by participant A. The workstation 106 labeled workstation B may be used by participant B. Although market 100 is shown with six workstations 106, it is to be understood that market 100 may include any suitable number of workstations 106.

The participants of the agreement may individually use workstations 106 to exchange and purchase goods and services. Transactions between participants may run on workstations 106 and may be handled by trading processor 104. Trading processor 104 may include any suitable processor to process any suitable transaction. Trading processor 104 may be implemented on any suitable hardware such as a computer.

Ownership processor 102 may be any suitable equipment or device capable of tracking revenues, commissions, profits, dates, etc. Ownership processor 102 may be capable of determining a reward each participant of the agreement receives when certain events occur or thresholds are achieved. For example, ownership processor 102 may determine how many warrants each participant of the agreement can convert at a predetermined conversion rate when, for example, a threshold is achieved.

As shown in FIG. 1, information may be communicated between trading processor 104 and workstations 106 via communications paths 112. Paths 112 may be any suitable communications paths. Paths 112 may be, for example, wired or wireless paths, and may be part of a communications network. As also shown in FIG. 1, ownership information may be communicated between ownership processor 102 and workstation 104 via delivery paths 114. Delivery paths 114 may be any suitable communications paths. Delivery paths 114 may be, for example, wired or wireless paths, and may be part of a communications network.

Spec. ¶¶ 19–23. These additional elements (italicized in claim 41 *supra*) do no more than generally link the use of the abstract idea to a particular technological environment or field of use. *See* Spec. ¶ 23 (describing the “information may be communicated between trading processor 104 and workstations 106 via communications paths 112. Paths 112 may be any suitable communications paths. Paths 112 may be, for example, wired or wireless paths, and may be part of a communications network. As also shown in FIG. 1, ownership information may be communicated between ownership processor 102 and workstation 104 via delivery paths 114.”).

We find no indication in the Specification that the operations recited in claim 41 invoke any assertedly inventive programming, require any specialized computer hardware or other inventive computer components, i.e., a particular machine, or that the claimed invention is implemented using anything other than generic computer components to perform generic computer functions. *See DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014) (“[A]fter *Alice*, there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible.”).

As such, we disagree with Appellant’s contention that “the claimed subject matter is directed to improvements in electronic exchanges . . . where[in] communication with a trading processor and a[n] ownership processor is over two different delivery paths over a network which may help reduce the amount of transaction or communications over the network.” Appeal Br. 11–12 (emphasis omitted) (citing Spec. ¶¶ 21–22, 47). Appellant’s Specification, reproduced *supra*, discloses that these delivery paths “may be any suitable communications paths,” such as wired or wireless paths part of a communications network (Spec. ¶ 23), which generally links the abstract idea to a technological environment—*e.g.*, a claim describing how the abstract idea of hedging could be used in the commodities and energy markets, as discussed in *Bilski v. Kappos*, 561 U.S. 593, 595 (2010).

Appellant draws an analogy between the pending claims and those at issue in *Core Wireless Licensing S.A.R.L. v LG Electronics, Inc.*, 880 F.3d 1356 (Fed. Cir. 2018). Appeal Br. 14. However, we can find no parallel between claim 41 and the claims at issue in *Core Wireless*. To the extent there is an improvement in claim 41, the improvement is to the abstract idea, and this improvement is implemented with conventional computer equipment and processing. Although *Core Wireless* is “directed to a particular manner of summarizing and presenting information in electronic devices,” resulting in an improved user interface, claim 41 does not recite an improved user interface. *See Core Wireless*, 880 F.3d at 1362. There, the court stated:

Claim 1 of the ‘476 patent requires “an application summary that can be reached directly from the menu,” specifying a particular manner by which the summary window must be accessed. The

claim further requires the application summary window list a limited set of data, “each of the data in the list being selectable to launch the respective application and enable the selected data to be seen within the respective application.” This claim limitation restrains the type of data that can be displayed in the summary window. Finally, the claim recites that the summary window “is displayed while the one or more applications are in an un-launched state,” a requirement that the device applications exist in a particular state. These limitations disclose a specific manner of displaying a limited set of information to the user, rather than using conventional user interface methods to display a generic index on a computer. Like the improved systems claimed in *Enfish*, *Thales*, *Visual Memory*, and *Finjan*, these claims recite a specific improvement over prior systems, resulting in an improved user interface for electronic devices.

Id. at 1362–63. In contrast, in Appellant’s claim 41, the recited interface is used as a mere tool. Appellant’s argument is not commensurate with the scope of the claim when viewed in light of the Specification, because besides using a generic workstation interface as a tool in its ordinary capacity (*see* Spec., Fig. 1) to display information, Appellant has not shown that the claimed invention reflects an improved user interface.

As discussed, after each determining step (f)–(i) is performed, a notification is transmitted to the “interface of a workstation of a participant” providing information about fees/revenues under the agreement. The recitation of transmitting a notification to the interface of a workstation of a participant to provide information to the participant is insignificant extra-solution activity because its incidental to the primary process of claim 41. *See* MPEP § 2106.05 (g) (“An example of post-solution activity is an element that is not integrated into the claim as a whole, *e.g.*, a printer that is used to output a report of fraudulent transactions, which is recited in a claim

to a computer programmed to analyze and manipulate information about credit card transactions in order to detect whether the transactions were fraudulent.”).

We are not persuaded that the claimed invention, as recited in claim 41, achieves a comparable improved technological result. To the contrary, as described above, the claimed invention, when considered as a whole in light of the Specification, clearly appears to be focused on achieving a business and economic objective, i.e., fulfilling the terms of a contractual agreement that issues incentives in the form of warrants that can be converted to ownership shares and determining transaction fees/revenues for services provided.

We also find no indication in the Specification that the claimed invention effects a transformation or reduction of a particular article to a different state or thing. Nor do we find anything of record that attributes an improvement in computer technology and/or functionality to the claimed invention or that otherwise indicates that the claimed invention integrates the abstract idea into a “practical application,” as that phrase is used in the 2019 Revised Guidance.³ Accordingly, we agree with the Examiner that claim 41 is directed to an abstract idea.

³ The 2019 Revised Guidance references MPEP §§ 2106.05(a)–(c) and (e) in describing the considerations that are indicative that an additional element or combination of elements integrates the judicial exception, e.g., the abstract idea, into a practical application. 2019 Revised Guidance, 84 Fed. Reg. at 55. If the recited judicial exception is integrated into a practical application, as determined under one or more of these MPEP sections, the claim is not “directed to” the judicial exception.

Step Two of the Alice Framework (2019 Revised Guidance, Step 2B)

Having determined under step one of the *Alice* framework that claim 41 is directed to an abstract idea, we next consider under Step 2B of the 2019 Revised Guidance, the second step of the *Alice* framework, whether claim 41 includes additional elements or a combination of elements that provides an “inventive concept,” i.e., whether the additional elements amount to “significantly more” than the judicial exception itself. 2019 Revised Guidance, 84 Fed. Reg. at 56.

Besides the recited judicial exception, the additional elements are recited in claim 41, which include ownership processor, trading processor, electronic exchange, and an interface of a workstation. The ownership processor, trading processor, and interface, as the Examiner finds (Final Act. 4), are disclosed in the Specification at a high degree of generality, i.e., as generic computer components used to perform generic computer functions (*see, e.g.*, Spec. ¶¶ 19–23). The transmitting of information to a workstation interface as discussed above is well-understood, routine, or conventional activity because any generic computer workstation is capable of displaying information. The term “electronic exchange” and the recited communication paths amount to merely indicating a field of use or technological environment in which to apply a judicial exception, which does not amount to significantly more than the exception itself. *Diamond v. Diehr*, 450 U.S. 175, 192 n.14 (1981) (A judicial exception cannot be made eligible “simply by having the applicant acquiesce to limiting the reach of the patent for the formula to a particular technological use.”); *see also Affinity Labs of Tex., LLC v. DIRECTV, LLC*, 838 F.3d 1253 (Fed. Cir. 2016).

Appellant argues that “the claimed invention, in one example, recites an additional element (or combination of elements) that are ‘not well-understood, routine or conventional’ for electronic exchanges including a trading processor for processing transactions to determine entitlement based on the transaction type extracted from the transaction and transmitting a notification to an interface of a workstation wherein communication with the ownership processor occurs over a first delivery path and communication with the trading processor occurs over a second delivery path.” Appeal Br. 13 (emphasis omitted).

We are not persuaded by Appellant’s argument because “the relevant inquiry is not whether the claimed invention as a whole is unconventional or non-routine.” *BSG Tech LLC v. BuySeasons, Inc.*, 899 F.3d 1281, 1290 (Fed. Cir. 2018). And, a claim does not gain subject matter eligibility solely because it is narrowed or limited to Appellant’s alleged improvement over existing processes. *See, e.g., Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1321 (Fed. Cir. 2016) (“A narrow claim directed to an abstract idea, however, is not necessarily patent-eligible.”). The question is whether the claim includes additional elements, i.e., elements other than the abstract idea itself, that “‘transform the nature of the claim’ into a patent-eligible application.” *Alice Corp.*, 573 U.S. at 217 (quoting *Mayo*, 566 U.S. at 79, 78).

The only claimed computer elements beyond the abstract idea, as discussed above, do not amount to an inventive concept because a generic computer used to perform generic computer functions in a known technological environment is well-understood, routine, or conventional—a determination fully consistent with the Specification (*see* Spec. ¶¶ 19–23).

These additional elements, individually and in combination, do not provide an inventive concept.

Contrary to Appellant's contention in reference to *Berkheimer* (Appeal Br. 13), the Federal Circuit, in accordance with *Alice*, has "repeatedly recognized the absence of a genuine dispute as to eligibility" where claims have been defended as involving an inventive concept based "merely on the idea of using existing computers or the Internet to carry out conventional processes, with no alteration of computer functionality." *Berkheimer v. HP Inc.*, 890 F.3d 1369, 1373 (Fed. Cir. 2018) (Moore, J., concurring); *see also BSG Tech*, 899 F.3d at 1291 ("BSG Tech does not argue that other, non-abstract features of the claimed inventions, alone or in combination, are not well-understood, routine and conventional database structures and activities. Accordingly, the district court did not err in determining that the asserted claims lack an inventive concept."). We are not persuaded of error in the Examiner's determination that the claims are directed to a judicial exception without significantly more.

Accordingly, we sustain the rejection of independent claim 41 under 35 U.S.C. § 101, including independent claims 59 and 60, which fall with claim 41. We also sustain the rejection of dependent claims 42–58 for the same reasons, which are argued based on their dependency from claim 41. *See* Appeal Br. 9.

35 U.S.C. § 102(a)

In contesting the Examiner’s rejection of claims 41–60 as being anticipated by Lutnick, Appellant asserts:

Appellant respectfully disagrees with the rejection of claims 41-60. As explained above, independent claim 41 (and independent claims 59 and 60) recite subject matter including transmitting notifications to interfaces of workstations of participants using a trading processor wherein communication with the ownership processor occurs over a first delivery path and communication with the trading processor occurs over a second delivery path.

Appeal Br. 16. Appellant presents nothing further to contest the Examiner’s findings in Lutnick.

The Examiner responds that this “argument is not persuasive because it is a mere assertion and the argument does not describe what is deficient in the office action.” Ans. 7–8. Nevertheless, the Examiner reiterates that

the Lutnick reference discloses “As shown in FIG. 1, information may be communicated between trading processor 104 and workstations 106 via communications paths 112....As shown in FIG. 1, ownership information may be communicated between ownership processor 102 and workstation 104 via delivery paths 114. Delivery paths 114 may be any suitable communications paths.”-see Lutnick ¶[0024] and Fig. 1.

Ans. 8.

Appellant fails to respond in the Reply Brief.

As such, Appellant has failed to dispute the Examiner’s findings by pointing out specific errors or distinctions over Lutnick. And, we decline to examine the claims *sua sponte*, looking for distinctions over the prior art. *Cf. In re Baxter Travenol Labs.*, 952 F.2d 388, 391 (Fed. Cir. 1991) (“It is not the function of this court to examine the claims in greater detail than

argued by an appellant, looking for [patentable] distinctions over the prior art.”). In the absence of a more detailed explanation, we are not persuaded of error on the part of the Examiner. *See In re Jung*, 637 F.3d. 1356, 1365 (Fed. Cir. 2011) (“[I]t has long been the Board’s practice to require an applicant to identify the alleged error in the examiner’s rejections,” (citing *Ex Parte Frye*, 94 USPQ2d at 1072) (“The panel then reviews the obviousness rejection for error based upon the issues identified by appellant, and in light of the arguments and evidence produced thereon.”))).

Accordingly, we sustain the rejection of claims 41–60 as anticipated by Lutnick.

CONCLUSION

The rejections of claims 41–60 under 35 U.S.C. § 101 and § 102(a) are AFFIRMED.

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
41–60	101	Eligibility	41–60	
41–60	102(a)	Lutnick	41–60	
Overall Outcome			41–60	

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