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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* SCOTT MACE, BART ALAN MELTZER,  
JOSEPH DONOVAN, and SEAN GALLAVAN

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Appeal 2020-001869  
Application 11/552,099  
Technology Center 3600

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Before MURRIEL E. CRAWFORD, KENNETH G. SCHOPFER, and  
TARA L. HUTCHINGS, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL  
STATEMENT OF THE CASE

Appellant<sup>1</sup> seeks our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 57–76. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF DECISION

We AFFIRM.

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<sup>1</sup> We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42(a). Appellant identifies the real party in interest as International Group, Inc. (Appeal Br. 1).

## THE INVENTION

Appellant claims a method of server-side tracking of click-throughs by users presented with advertising, with options for tracking advertising impact beyond making a reservation to fulfillment (Spec. ¶ 10).

Claim 57 is representative of the subject matter on appeal.

57. A method of persisting and updating an updatable itinerary data structure that records online negotiations between a consumer and multiple distinct travel-related vendors, including:

identifying a travel-related subject matter of interest;

identifying purchase categories within the travel-related subject matter;

for at least two particular purchase categories, identifying one or more relevant vendors;

in a first network session, intermediating, by a travel service hub server, an online negotiation between a user or user's agent (collectively referred to as the user) and at least first and second vendors in different purchase categories, the first and second vendors being distinct, including for a vendor sending the vendor's offerings to the user via the travel service hub server, including availability and pricing,

receiving, by the travel service hub server, the user's selection of a particular offering,

channeling messages between the vendor and the user via the travel service hub server, and

persisting, as an item in non-transitory memory of the travel service hub server, confirmation of the intermediated negotiation, the item forming part of an updatable itinerary data structure;

in a second network session with the user, accessing, by the travel service hub server, the updatable itinerary data structure and sending the user a formatted version of items in the updatable itinerary data structure with at least one control for adding an additional item;

in response to the travel service hub server receiving a message indicating selection of said at least one control for adding the additional item, repeating, by the travel service hub server, the sending, receiving, channeling and persisting actions, thereby adding the additional item to the updatable itinerary data structure;

transmitting electronically, by the travel service hub server, to a web site a referral of the user in response to advertising;

determining from the electronically received referral an advertising stimulus leading to the user referral;

wherein identifying the travel-related subject matter of interest, the purchase categories and the relevant vendors is based on the user referral;

persisting, by the travel service hub server, in the updateable itinerary data structure an identification of the advertising stimulus; and

after a date for fulfillment of the items on the itinerary passes, electronically reporting, by the travel service hub server, fulfillment without cancellation to at least one vendor associated with the advertising stimulus.

#### THE REJECTIONS

Claims 57–76 are rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.

Claims 57–62 and 64–70 are rejected under 35 U.S.C. § 103(a) as being unpatentable over DeLorme (US 5,948,040, Sept. 7, 1999), in view of Horowitz (US 2005/0097204 A1, May 5, 2005), and Whyel (US 2001/0027481 A1, Oct. 4, 2001).<sup>2</sup>

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<sup>2</sup> We treat the Examiner's identification at page 6 of the Final Action of claims 34–38 and 44–49 as the claims subject to this rejection as inadvertent error. See Final Act. 6–14 (analyzing claims 57–62 and 64–67 as subject to this rejection).

Claim 63 is rejected under 35 U.S.C. § 103(a) as being unpatentable over DeLorme, in view of Horowitz and Whyel, further in view of Tagawa (US 5,732,398, Mar. 24, 1998).

Claims 71–75 are rejected under 35 U.S.C. § 103(a) as being unpatentable over DeLorme, in view of Horowitz and Whyel, further in view of Monk (US 2004/0138928 A1, July 15, 2004).

Claim 76 is rejected under 35 U.S.C. § 103(a) as being unpatentable over DeLorme, in view of Horowitz, Whyel, and Monk, further in view of Warren (US 2003/0101131 A1, May 29, 2003).

## ANALYSIS

### 35 U.S.C. § 101 REJECTION

We will sustain the rejection of claims 57–76 under 35 U.S.C. § 101.

The Supreme Court

set forth a framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts. First, . . . determine whether the claims at issue are directed to one of those patent-ineligible concepts. If so, . . . then ask, “[w]hat else is there in the claims before us?” To answer that question, . . . consider the elements of each claim both individually and “as an ordered combination” to determine whether the additional elements “transform the nature of the claim” into a patent-eligible application. [The Court] described step two of this analysis as 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.”

*Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 217–218 (citations omitted) (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 72–73, 78–79 (2012)).

To perform this test, we must first determine whether the claims at issue are directed to a patent-ineligible concept. The Federal Circuit has explained that “the ‘directed to’ inquiry applies a stage-one filter to claims, considered in light of the [S]pecification, 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)). It asks 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.

In so doing we apply a “directed to” two prong test: 1) evaluate whether the claim recites a judicial exception, and 2) if the claim recites a judicial exception, evaluate whether the judicial exception is integrated into a practical application. *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50, 50–57 (Jan. 7, 2019) (“Guidance”).

The Examiner determines that the claims are directed to creating and updating an updatable itinerary that records negotiations between a customer and travel vendors (Final Act. 4). The Examiner determines that the claims are directed to a method of organizing human activities because it manages the travel planning of persons and their relationships with service providers and agents that involves basic commercial practices. The Examiner additionally determines that the claims could be performed in the human mind or through pen and paper. The Examiner finds that the additional elements recited beyond the abstract ideas identified are known and conventional generic computing elements that do not present improvements to a technological field or functioning of the computer itself (Final Act. 5).

The Specification discloses that the present invention relates to persisting and updating an updatable itinerary data structure that records online negotiations between a consumer and multiple distinct travel-related vendors (Spec. ¶ 197). The method includes steps of negotiations between a consumer and at least two particular vendors in at least two particular purchase categories (Spec. ¶ 198).

Consistent with this disclosure, claim 57 includes the steps of “sending the vendor’s offerings to the user via the travel service hub server,” “receiving, by the travel service hub server, the user’s selection of a particular offering,” “channeling messages between the vendor and the user via the travel service hub server.”

We thus agree with the Examiner’s findings that the claims are directed to controlling the behavior of persons, i.e., the behavior of customers and travel vendors. It follows from prior Supreme Court cases, and *Gottschalk v. Benson*, 409 U.S. 63 (1972), in particular, that the claims at issue here are directed to an abstract idea. Controlling the behavior of persons concerning travel is a method of organizing human behavior because, as the Examiner determined, “it manages the travel planning of persons and their relationships with service providers and agents” (Final Act. 4), which is not eligible subject matter. *See Alice*, 573 U.S. at 217–18. We also note that the Specification discloses and the claims recite a method involving advertising which is a fundamental economic practice and therefore the invention is a method of organizing human activity on that basis as well. *Guidance*, 84 Fed. Reg. at 52.

Also, we find the steps of “sending the vendor’s offerings to the user,” “receiving . . . the user’s selection,” “channeling messages between the

vendor and the user,” “receiving a message indicating selection,” and “transmitting electronically . . . a referral of the user,” and “determining . . . advertising stimulus leading to the user referral,” constitute “analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, as essentially mental processes within the abstract-idea category.” *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016); *see also buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014) (claims directed to certain arrangements involving contractual relations are directed to abstract ideas). Thus, we find that the claims recite an abstract idea of methods of organizing human activity and, in the alternative, a mental process.

Turning to the second prong of the “directed to” test, claim 57 requires a “server.” The recitation of the word “server” does not impose “a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception.” 84 Fed. Reg. at 53. We find no indication in the Specification, nor does Appellant direct us to any indication, that the operations recited in independent claim 57 invoke any 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 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.”).

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, short of attorney argument, that attributes any 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 revised Guidance. *See* Guidance, 84 Fed. Reg. at 55.

In this regard, the recitation of a “server” does not affect an improvement in the functioning of the server or other technology, does not recite a particular machine or manufacture that is integral to the claims, and does not transform or reduce a particular article to a different state or thing. *Id.* Thus, claim 57 is directed to a judicial exception that is not integrated into a practical application and, thus, is directed to an “abstract idea.”

Turning to the second step of the *Alice* analysis, because we find that claim 57 is directed to abstract ideas, the claim must include an “inventive concept” in order to be patent-eligible, i.e., there must be an element or combination of elements that is sufficient to ensure that the claim in practice amounts to significantly more than the abstract idea itself. *See Alice*, 573 U.S. at 217–18 (quoting *Mayo*, 566 U.S. at 72–73).

The introduction of a computer server into the claims does not alter the analysis at *Alice* step two.

[T]he mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention. Stating an abstract idea “while adding the words ‘apply it’” is not enough for patent eligibility. Nor is limiting the use of an abstract idea “to a particular technological environment.” Stating an abstract idea while adding the words “apply it with a computer” simply combines those two steps, with the same deficient result. Thus, if a patent’s recitation of a computer amounts to a mere instruction to “implemen[t]” an abstract idea

“on . . . a computer,” that addition cannot impart patent eligibility. This conclusion accords with the preemption concern that undergirds our § 101 jurisprudence. Given the ubiquity of computers, wholly generic computer implementation is not generally the sort of “additional featur[e]” that provides any “practical assurance that the process is more than a drafting effort designed to monopolize the [abstract idea] itself.”

*Alice*, 573 U.S. at 223 (alterations in original) (citations omitted).

Instead, the relevant question is whether claim 57 here does more than simply instruct the practitioner to implement the abstract idea . . . on a generic computer. *Id.* at 225. It does not.

Taking the claim elements separately, the function performed by the server at each step of the process is purely conventional. Using a server to retrieve, select, and apply decision criteria to data and modify the data as a result amounts to electronic data query and retrieval—one of the most basic functions of a computer. All of these computer functions are well-understood, routine, conventional activities previously known to the trading industry. *See Elec. Power Grp.*, 830 F.3d at 1354; *see also In re Katz Interactive Call Processing Patent Litig.*, 639 F.3d 1303, 1316 (Fed. Cir. 2011) (“Absent a possible narrower construction of the terms ‘processing,’ ‘receiving,’ and ‘storing,’ . . . those functions can be achieved by any general purpose computer without special programming.”). In short, each step does no more than require a generic computer server to perform generic computer functions. As to the data operated upon, “even if a process of collecting and analyzing information is ‘limited to particular content’ or a particular ‘source,’ that limitation does not make the collection and analysis other than abstract.” *SAP Am. Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1168 (Fed. Cir. 2018).

Considered as an ordered combination, the server of Appellant's claims adds nothing that is not already present when the steps are considered separately. The sequence of data reception-analysis-access/display is equally generic and conventional or otherwise held to be abstract. *See Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014) (sequence of receiving, selecting, offering for exchange, display, allowing access, and receiving payment recited an abstraction); *Inventor Holdings, LLC v. Bed Bath & Beyond, Inc.*, 876 F.3d 1372, 1378 (Fed. Cir. 2017) (holding that sequence of data retrieval, analysis, modification, generation, display, and transmission was abstract); *Two-Way Media Ltd. v. Comcast Cable Commc'ns, LLC*, 874 F.3d 1329, 1339 (Fed. Cir. 2017) (holding sequence of processing, routing, controlling, and monitoring was abstract). The ordering of the steps is, therefore, ordinary and conventional.

Claim 57 does not, for example, purport to improve the functioning of the server itself. As we stated above, claim 57 does not affect an improvement in any other technology or technical field. Claim 57 at issue amounts to nothing significantly more than instructions to apply the abstract ideas using some unspecified, generic computer. Under our precedents, that is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 573 U.S. at 226.

We have reviewed all the arguments (Appeal Br. 4–14) Appellant has submitted concerning the patent eligibility of the claims before us that stand rejected under 35 U.S.C. § 101. We find that our analysis above substantially covers the substance of all the arguments, which have been made. But, for purposes of emphasis, we will address various arguments in order to make individual rebuttals of same.

We are not persuaded of error on the part of the Examiner by Appellant's argument that the steps of claim 57 cannot be performed in the human mind or by pen and paper because the steps are specifically directed to recording online negotiations that occur in an e-commerce setting. We note that, 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 encompassed by the mental processes category unless the claim cannot practically be performed in the mind. *See 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.”); *Mortg. Grader, Inc. v. First Choice Loan Servs. Inc.*, 811 F.3d 1314, 1324 (Fed. Cir. 2016) (holding that computer-implemented method for “anonymous loan shopping” was an abstract idea because it could be “performed by humans without a computer”); *Versata Dev. Grp. v. SAP Am., Inc.*, 793 F.3d 1306, 1335 (Fed. Cir. 2015) (“Courts have examined claims that required the use of a computer and still found that the underlying, patent-ineligible invention could be performed via pen and paper or in a person’s mind.”); *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1375, 1372–73 (Fed. Cir. 2011) (holding that the incidental use of “computer” or “computer readable medium” does not make a claim otherwise directed to process that “can be performed in the human mind, or by a human using a pen and paper” patent eligible).

In the instant claims, we find that the fact that the steps of claim 57 are performed in an e-commerce setting does not mean that the claim cannot

be performed in the human mind or by a human using a pen and paper. We find the claim analogous to the claims in *Ultramercial* in “recit[ing] an invention that is . . . merely the routine or conventional use of the Internet.” *DDR Holdings*, 773 F.3d at 1258–59. That the steps are performed in an e-commerce setting is not necessarily sufficient to transform an otherwise abstract claim to patent eligible subject matter. *Ultramercial*, 772 F.3d at 716 (limiting the use of the abstract idea “to a particular technological environment” does not make the abstract idea patent-eligible). The claims essentially entail selection and negotiations between a vendor offering travel related services and a user which has been performed in the mind of humans with perhaps the aid of pen and paper for many years.

We are not persuaded of error on the part of the Examiner by Appellant’s argument that each pending claim includes significantly more than a judicial exception and is directed to a new and useful practical application because the Appellant does not explain why the claims are directed to a new and useful practical application. (Appeal Br. 6).

We do not agree with Appellant that the claims recite a particular device that satisfies the machine-or-transformation test. In making this argument, Appellant refers to the steps of claim 57 but does not identify a particular machine. The only machine recited in claim 57 is a travel service hub server. However, Appellant has not established that this server is anything other than a conventional server. We note that for a machine to impose a meaningful limit on the claimed invention, it must play a significant part in permitting a claimed method to be performed, rather than merely providing the generic environment in which to implement the recited abstract idea. *Cf. Versata Dev. Grp.*, 793 F.3d at 1335 (explaining that in

order for a machine to add significantly more, it must “play a significant part in permitting the claimed method to be performed, rather than function solely as an obvious mechanism for permitting a solution to be achieved more quickly”); *see also* MPEP § 2106.05(b)(II) (citing *Versata*).

We are not persuaded of error on the part of the Examiner by Appellant’s argument that the claim does not preempt the abstract idea. (Appeal Br. 7). “While preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015); *see also OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015) (“[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.”). And, “[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*, 788 F.3d at 1379.

We are not persuaded of error on the part of the Examiner by Appellant’s argument that the claims are inextricably tied to a computer system, are rooted in computer technology and improve the operation of a computer-implemented travel service hub server operating on the internet (Appeal Br. 8). Not all claims purporting to address Internet-centric challenges are eligible for patent. For example, in *DDR Holdings*, the Court distinguished the patent-eligible claims at issue from claims found patent-ineligible in *Ultramercial*. *See DDR Holdings*, 773 F.3d at 1258–59 (citing *Ultramercial*, 772 F.3d at 715–16). As noted there, the *Ultramercial* claims were “directed to a specific method of advertising and content distribution

that was previously unknown and never employed on the Internet before.” *Id.* at 1258 (quoting *Ultramercial*, 772 F.3d at 714). Nevertheless, those claims were patent ineligible because they “merely recite[d] the abstract idea of ‘offering media content in exchange for viewing an advertisement,’ along with ‘routine additional steps such as updating an activity log, requiring a request from the consumer to view the ad, restrictions on public access, and use of the Internet.’” *Id.*

Appellant’s asserted claims are analogous to claims found ineligible in *Ultramercial* and distinct from claims found eligible in *DDR Holdings*. The ineligible claims in *Ultramercial* recited “providing [a] media product for sale at an Internet website;” “restricting general public access to said media product;” “receiving from the consumer a request to view [a] sponsor message;” and “if the sponsor message is an interactive message, presenting at least one query to the consumer and allowing said consumer access to said media product after receiving a response to said at least one query.” *Ultramercial*, 772 F.3d at 712. Similarly, Appellant’s asserted claims recite receiving, analyzing, modifying, and transmitting data related to travel services. This is precisely the type of Internet activity found ineligible in *Ultramercial*.

We are lastly not persuaded of error on the part of the Examiner by Appellant’s argument that the applied references fail to render claim 57 unpatentable and do not teach or suggest the method of claim 57 but rather that the claimed approach includes unconventional limitations that confine the claims to a particular useful application (Appeal Br. 8–9). To the extent Appellant maintains that the limitations of claim 57 necessarily amount to “significantly more” than an abstract idea because the claimed apparatus is

allegedly patentable over the prior art, Appellant misapprehend the controlling precedent. Although the second step in the *Alice/Mayo* framework is termed a search for an “inventive concept,” the analysis is not an evaluation of novelty or non-obviousness, but rather, a search for “an element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.’” *Alice*, 573 U.S. at 217–18 (quoting *Mayo*, 566 U.S. at 72–73). A novel and nonobvious claim directed to a purely abstract idea is, nonetheless, patent-ineligible. *See Mayo*, 566 U.S. at 90.

In view of the foregoing, we will sustain the Examiner’s rejection of claim 57 under 35 U.S.C. § 101. We will also sustain this rejection as directed to the remaining claims because Appellant has not argued the separate eligibility of the remaining claims.

#### REJECTION UNDER 35 U.S.C. § 103(a)

We are not persuaded of error on the part of the Examiner by Appellant’s argument that the prior art does not disclose “transmitting electronically, by the travel service hub server, to a web site a referral of the user in response to advertising . . . wherein identifying the travel-related subject matter of interest, the purchase categories and the relevant vendors is based on the user referral,” as recited in claim 57. The Examiner relies on Horowitz at paragraphs 45–46 for teaching this subject matter.

Appellant’s Specification discloses:

The method embodiment described may further include receiving electronically at a website a referral of a user in response to advertising and determining from the electronically received referral an advertising stimulus 1304 leading to the



user referral. For instance, advertising associated with words or categories purchased from an advertising vendor, such as a search engine vendor, attracts the user to click through for more information. When the user clicks 1302, the search engine invokes a URL provided by the entity that bought the advertising.

Spec. ¶ 209. As such, the referral recited in claim 57 is the action of the user of clicking through for more information.

We find that Horowitz describes at paragraphs 45 and 46 and depicts in Figure 4 that an advertisement presented to the user is redirected to the advertiser destination (412) in response to the user clicking through advertisement (410). As such, we agree with the Examiner that the “user referral” reads on the advertising link click in Horowitz (Ans. 8).

We are not persuaded that the Examiner erred because none of the applied references provides a credible reason to one of ordinary skill in the art to modify such disclosures to provide a method having the combination of steps and features recited in claim 57 (Appeal Br. 10). The Examiner clearly set out the reasons for combining DeLorme and Horowitz and clearly set out the reasons for combining DeLorme, Horowitz and Whyel on page 10 of the Final Action. This argument is not persuasive because, as pointed out by the Examiner, the specific reasons provided for the combination are not rebutted by Appellant.

In view of the foregoing, we will sustain the Examiner’s rejection under 35 U.S.C. § 103(a) of claim 57. We will also sustain this rejection as it is directed to claims 58-62 and 64-70 dependent therefrom because Appellant does not argue the separate patentability of these claims. We will also sustain the remaining rejections under 35 U.S.C. §103(a) because

Appellant relies on the arguments made in support of the patentability of claim 57 in responding to these rejections (Appeal Br. 13–14).

### CONCLUSIONS OF LAW

We conclude the Examiner did not err in rejecting claims 57–76 under 35 U.S.C. § 101.

We conclude the Examiner did not err in rejecting claims 57–76 under 35 U.S.C. § 103(a).

### CONCLUSION

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
57–76	101	Eligibility	57–76	
57–62, 64–70	103	DeLorme, Horowitz, Whyel	57–62, 64–70	
63	103	DeLorme, Horowitz, Whyel, Tagawa	63	
71–75	103	DeLorme, Horowitz, Whyel, Monk	71–75	
76	103	DeLorme, Horowitz, Whyel, Monk, Warren	76	
<b>Overall Outcome</b>			57–76	

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**