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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DOUGLAS A. BRENHOUSE, JEREMY J. PARADISE, and
ANDREW KWASIK

Appeal 2020-002907
Application 15/139,601
Technology Center 3600

Before TAWEN CHANG, RACHEL H. TOWNSEND, and
JAMIE T. WISZ, *Administrative Patent Judges*.

WISZ, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ seeks review of claims 1–20. We have jurisdiction under 35 U.S.C. § 6(b).

For the reasons set forth below, we AFFIRM.

CLAIMED SUBJECT MATTER

The Specification describes “[s]ystems and methods for providing an indication of auction bidding interest.” Spec. ¶ 5. Claims 1, 11, and 17 are independent claims. Claim 1 is illustrative and is set forth below (annotated with bracketed numbers for reference to the limitations in the claim):

1. An auction system, comprising:

[1] a first client terminal including a first display, a first memory storing first instructions, and a first processor configured to

[2] execute the stored first instructions to cause first information regarding an auction lot available for live auction bidding to be shown on the first display,

[3] receive a first signal indicative of a first input to the first client terminal, the first input being indicative of an interest of a first user to enter a bid on the auction lot, and

[4] in response to the receipt of the first input, cause the first display to show second information allowing the first user to enter the bid on the auction lot; and

¹ We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as Auction Mobility LLC. Appeal Br. 1.

[5] a second client terminal including a second processor, a second display, and a second memory storing second instructions, [6] the second processor being configured to execute the stored second instructions to cause third information regarding the auction lot available for live auction bidding to be shown on the second display;

[7] wherein the first processor is configured to, in response to the receipt of the first input, cause a second signal to be transmitted to the second client terminal; and

[8] wherein the second processor is configured to, in response to the receipt of the second signal, cause a notification to be provided to a user of the second client terminal.

Appeal Br. A (Claims Appendix).

REJECTIONS

The Examiner rejected claims 1–20 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter.

The Examiner rejected claims 1–20 under 35 U.S.C. § 103 as being unpatentable over Scully² in view of Mullendore.³

² Scully et al., US 2013/0211960 A1, published Aug. 15, 2013 (“Scully”).

³ Mullendore, Robert G., US 2008/0262943 A1, published Oct. 23, 2008 (“Mullendore”).

ISSUES AND ANALYSIS

Rejection of claims 1–20 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter

I. PRINCIPLES OF LAW

A. Section 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.

However, the U.S. Supreme Court has long interpreted 35 U.S.C. § 101 to include implicit exceptions: “[I]aws of nature, natural phenomena, and abstract ideas” are not patentable. *E.g., Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014).

In determining whether a claim falls within an excluded category, we are guided by the Court’s two-part framework, described in *Mayo* and *Alice*. *Id.* at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–77 (2012)). In accordance with that framework, we first determine whether the claim recites an abstract idea. *See Alice*, 573 U.S. at 219 (“On their face, the claims before us are drawn to the concept of intermediated settlement, *i.e.*, the use of a third party to mitigate settlement risk.”); *see also Bilski v. Kappos*, 561 U.S. 593, 611 (2010) (“Claims 1 and 4 in petitioners’ application explain the basic concept of hedging, or protecting against risk.”).

Concepts determined to be abstract ideas, and thus patent ineligible, include certain methods of organizing human activity, such as fundamental economic practices (*Alice*, 573 U.S. at 219–20; *Bilski*, 561 U.S. at 611);

mathematical formulas (*Parker v. Flook*, 437 U.S. 584, 594–95 (1978)); and mental processes (*Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)). Concepts that recite abstract ideas, but are nonetheless determined to be patent eligible, include physical and chemical processes, such as “molding rubber products” (*Diamond v. Diehr*, 450 U.S. 175, 191 (1981)); “tanning, dyeing, making waterproof cloth, vulcanizing India rubber, smelting ores” (*id.* at 182 n.7 (quoting *Corning v. Burden*, 56 U.S. 252, 267–68 (1853))); and manufacturing flour (*Benson*, 409 U.S. at 69 (citing *Cochrane v. Deener*, 94 U.S. 780, 785 (1876))).

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

B. USPTO Section 101 Guidance

In January 2019, the U.S. Patent and Trademark Office (USPTO) published revised guidance on the application of § 101. 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019)

(“2019 Revised Guidance”).⁴ “All USPTO personnel are, as a matter of internal agency management, expected to follow the guidance.” *Id.* at 51; *see also* October 2019 Update at 1.

Under the 2019 Revised Guidance and the October 2019 Update, we first look to whether the claim recites:

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

(2) additional elements that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h) (9th ed. Rev. 08.2017, Jan. 2018)) (“Step 2A, Prong Two”).⁵

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

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

⁴ The Office issued further guidance on October 17, 2019. USPTO, *October 2019 Update: Subject Matter Eligibility* (the “October 2019 Update”) (available at https://www.uspto.gov/sites/default/files/documents/peg_oct_2019_update.pdf).

⁵ This evaluation is performed by (a) identifying whether there are any additional elements recited in the claim beyond the judicial exception, and (b) evaluating those additional elements individually and in combination to determine whether the claim as a whole integrates the exception into a practical application. *See* 2019 Revised Guidance - Section III(A)(2), 84 Fed. Reg. 54–55.

(3) adds a specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field (*see* MPEP § 2106.05(d)); or

(4) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception (“Step 2B”).

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

II. ANALYSIS

Applying the 2019 Revised Guidance to the facts on this record, we find that claims 1–20 are directed to patent-ineligible subject matter.

Claims 1–16 are directed towards a system, which is an apparatus. Claims 17–20 are directed towards a method, which is a process. Following the first step of the *Mayo/Alice* analysis, we find that the claims are, therefore, directed to an apparatus and a process, and therefore fall into the broad statutory categories of patent-eligible subject matter under 35 U.S.C. § 101. We, thus, proceed to Step 2A, Prong One, of the 2019 Revised Guidance.

A. Guidance Step 2A, Prong 1

The 2019 Revised Guidance instructs us first to determine whether any judicial exception to patent eligibility is recited in the claim. The 2019 Revised Guidance identifies three judicially-expected groupings classified by the courts as abstract ideas: (1) mathematical concepts, (2) certain methods of organizing human activity such as fundamental economic practices, and (3) mental processes.

The Examiner finds that claim 1 recites the abstract idea of receiving a bid for an item. Final Act. 4. The Examiner also finds that the limitations of claim 1 “set forth the process for receiving bids and notifying a client terminal of the bid” and that “[t]hese limitations amount to certain methods of organizing human activity, including fundamental economic principles or practices and commercial or legal interactions (e.g. advertising, marketing or sales activities or behaviors, etc.)” *Id.* at 5.

We agree with the Examiner that claim 1 recites a judicial exception. More specifically, claim 1, reproduced above, recites an auction system with a first and second client terminal with processors configured to:

[2] “execute the stored first instructions to cause first information regarding an auction lot available for live auction bidding to be shown on the first display,” [3] “receive a first signal indicative of a first input to the first client terminal,” [4] “cause the first display to show second information allowing the first user to enter the bid on the auction lot,” [6] “execute the stored second instructions to cause third information regarding the auction lot available for live auction bidding to be shown on the second display,” [7] “cause a second signal to be transmitted to the second client terminal,” and [8] “cause a notification to be provided to a user of the second client terminal.” Appeal Br. A. Under the broadest reasonable interpretation, limitations [2] through [4] and [6] through [8] recite the fundamental economic practice and commercial interactions of providing an indication of auction bidding interest.

The Specification describes how, during live auctions, the “auctioneer can visually see onsite bidders and can thus gauge onsite bidding interest in

an auction lot by visually observing the activity of potential bidders.” Spec. ¶ 2. In contrast, the “auctioneer cannot . . . see off site bidders and therefore cannot gauge bidding interest of these bidders on the auction lot.” *Id.* Therefore, the Specification describes the invention as “[s]ystems and methods for providing an indication of auction bidding interest.” *Id.* ¶ 5. Thus, the claims recite one of certain methods of organizing human activity, specifically fundamental economic practices and commercial interactions, identified as being abstract ideas in the 2019 Revised Guidance.

Appellant asserts that the Examiner improperly uses independent claim 1 as representative of all claims and that neither of independent claims 11 and 17 recites “a second client terminal,” and further asserts that these claims also recite additional limitations not included in claim 1. Appeal Br. 24–25. Appellant also contends that the claims provide an indication of auction bidding interest and that the Examiner “oversimplifies these systems and method as being directed to receiving a bid and notifying a client terminal of the bid.” *Id.* at 25. Also, according to Appellant, “the Office Action improperly ignores the technical aspects of the claimed subject matter.” *Id.*

We are not persuaded by these arguments. Although claims 11 and 17 do not recite “a second client terminal,” they instead recite “a master client terminal” which receives signals from “client terminal(s)” regarding interest in bidding on an auction lot. Therefore, like claim 1, claims 11 and 17 recite the fundamental economic practice of providing an indication of auction bidding interest. While we agree that the claims are directed to indicating an auction bidding interest (as opposed to just placing a bid), such an indication

of auction interest is also a fundamental economic practice, which is merely being implemented on computers. The additional elements of claims 1 and 17 recited by Appellant such as

for each of a plurality of bidders or client terminals that are each remotely located from the auctioneer or master client terminal, either receiving no signal therefrom so as to indicate no interest in bidding on the auction lot from the bidder or receiving a first signal therefrom so as to indicate interest in bidding on the auction lot from the bidder

also relate to the fundamental economic practice of indicating bidding interest (or no interest). Appeal Br. 25. Furthermore, Appellant does not specifically point to which “technical aspects” of the claims are being overlooked; therefore, we are not persuaded by this argument.

Accordingly, we find that the elements of claims 1, 11, and 17 recite a fundamental economic practice and commercial interactions, which correspond to the judicial exception of one of certain methods of organizing human activity.

B. Guidance Step 2A, Prong 2

Having determined that the claims recite a judicial exception, we next consider whether the claims integrate the judicial exception into a practical application. “[I]ntegration into a practical application” requires that the claim recite an additional element or a combination of elements, that when considered individually or in combination, “apply, rely on, or use the judicial exception in a manner that imposes a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed

to monopolize the judicial exception.” 2019 Revised Guidance, 84 Fed. Reg. at 54.

Here, there is no practical integration of the abstract idea. Other than the limitations reciting the abstract idea, discussed above, the remaining elements recite [1] “a first client terminal including a first display, a first memory storing first instructions, and a first processor” and [5] “a second client terminal including a second processor, a second display, and a second memory storing second instructions.” The terminals recited in the claims are described in the Specification as being any of “a desktop computer, a workstation, a minicomputer, a laptop computer, a tablet computer, a personal digital assistant (PDAs), a smart mobile phone, and a smart watch.” Spec. ¶¶ 7, 10. Therefore, the claim merely recites implementing the abstract idea on a generic computer.

Appellant asserts that the “claimed subject matter is directed to solving a problem of providing an indication of auction bidding interest” and that this “problem translates into a technical problem of performing processing, transformation, and communication of various data related to live auction bidding.” Appeal Br. 26. Appellant further contends:

The problem is solved by client terminals having particular elements (e.g., a display, a memory, and a processor) and being communicatively coupled to each other to perform the operations recited in independent claim 1 and by a master client terminal having particular elements (e.g., a display, a memory, and a processor) being communicatively coupled to a plurality of client terminals located remotely from the master client terminal and receiving signals therefrom to perform the operations recited in independent claims 11 and 17.

Id.

According to Appellant, “[s]uch systems and methods of providing an indication of auction bidding interest have not been possible in the prior art” and “[t]hus, the technical solution to the technical problem enables a use of client terminals and communication therebetween to allow for providing an indication of auction bidding interest in a live auction context.” Appeal Br. 26. Appellant concludes that “[n]othing about the combination of these elements and process steps is ‘fundamental’ so as to be a patent ineligible ‘certain method of organizing human activity.’” *Id.*

Appellant also asserts that “the claims integrate any alleged method of organizing human activity into a practical application for providing an indication of auction bidding interest in a live auction context.” Appeal Br. 26–27. According to Appellant, “[t]his integration is evidenced by additional elements in claims 1–20 that applies or uses the alleged method of organizing human activity in a meaningful way beyond generally linking the method of organizing human activity to a particular technological environment.” *Id.* at 27. Appellant contends that the claims do not monopolize all systems or methods of the alleged abstract idea of “receiving a bid for an item,” because additional limitations are recited and each claim “recite[s] a particular combination of physical elements and actions that are not merely directed to receiving a bid.” *Id.* at 27–28.

Appellant further asserts that the Examiner’s rejection is inconsistent with *Enfish LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016), which “indicated that software-based solutions implemented on general-purpose computer components can qualify as improvements to computer

functionality.” Appeal Br. 28–29. Appellant also contends that *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314 (Fed. Cir. 2016), opines that Step 2A “can be satisfied by improvements that are not necessarily improvements to the operations of a computer or a computer network *per se*.” *Id.* at 29.

We are not persuaded by Appellant’s arguments. We agree with the Examiner that “a problem of indicating auction bidding interest is not a technical problem, but a commercial problem with no relation to any technology.” Ans. 5. We also find that, other than the limitations reciting the abstract idea, discussed above, the remaining elements recite terminals, which are generic computer elements that do not recite a specific data structure. These elements are distinguishable from *Enfish*, in which the claims were found to be an improvement to conventional databases. *Enfish*, 822 F.3d at 1337.

This case is also distinguishable from *McRO*, in which the court found that the claims were clearly an improvement to computer-related technology by allowing computers to produce “accurate and realistic lip synchronization and facial expressions in animated characters.” *McRo*, 837 F.3d at 1307. Here, the alleged improvement over prior art methods is that the claimed systems and methods provide an indication of auction bidding interest. We agree with the Examiner that this is not an improvement to any technology or computer functionality but “merely uses the generic computer functions to improve a commercial process, and link it to a technological environment.” Ans. 5. We also agree with the Examiner that “[i]nterest in bidding on an auction item is purely an abstract idea and is not a part of any

technological field, and can be done without any technology.” *Id.* The Specification acknowledges this in stating that an auctioneer can “gauge onsite bidding interest in an auction lot by visually observing the activity of potential bidders.” Spec. ¶2.

Furthermore, we are not persuaded by Appellant’s arguments that the claims do not monopolize all systems and methods of receiving a bid for an item. “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).

Thus, we find that the computer elements and steps recited in the claims do not reflect an improvement in the functioning of a computer or an improvement to other technology or technical field. Therefore, on this record, we conclude that the judicial exception in Appellant’s claims is not integrated into a practical application.

C. Guidance Step 2B

Having determined that the judicial exception is not integrated into a practical application, we next evaluate the additional elements individually and in combination to determine whether they provide an inventive concept, such as a specific limitation beyond the judicial exception that is not well-understood, routine, and conventional in the field, or whether the claim simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception. *See* 2019 Revised Guidance, 84 Fed. Reg. 51.

Appellant does not direct us to anything in the Specification indicating that any additional steps or components beyond the abstract idea recited in the claims are not generic or conventional. As discussed above, we find the Specification describes the use of conventional components. For example, the Specification describes how the terminals can be any of “a desktop computer, a workstation, a minicomputer, a laptop computer, a tablet computer, a personal digital assistant (PDAs), a smart mobile phone, and a smart watch.” Spec. ¶¶ 7, 10. The use of a generic computer to perform generic computer functions that are “well-understood, routine, conventional activit[ies]” previously known in the industry is not enough to transform the abstract idea into a patent-eligible invention. *See Alice*, 573 U.S. at 225–26 (alteration in original).

Accordingly, the preponderance of evidence of record supports the Examiner’s finding that Appellant’s claimed invention is directed to patent-ineligible subject matter. The rejection of claim 1 under 35 U.S.C. § 101 is sustained. Independent claims 11 and 17 suffer from the same deficiencies as claim 1 and we sustain the rejection of these claims for the reasons discussed above. Claims 2–10, 12–16, and 18–20 are not argued separately, and fall with claims 1, 11, and 17. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Rejection of claims 1–20 under 35 U.S.C. § 103 as being unpatentable over Scully in view of Mullendore

The Examiner finds that Scully discloses elements [1]–[3], [5], [7], and [8] of claim 1. Final Act. 7–8 (citing Scully ¶¶ 78, 79, 88, 90, 91). The Examiner acknowledges that Scully does not explicitly teach elements [4]

“in response to the receipt of the first input, cause the first display to show second information allowing the first user to enter the bid on the auction lot” and [6] “the second processor being configured to execute the stored second instructions to cause third information regarding the auction lot available for live auction bidding to be shown on the second display,” but finds that “Scully does disclose an auction system where the user can auction for an item and a property seller can upload an item for sale and any related document.” *Id.* at 8 (citing Scully ¶¶ 73, 78).

The Examiner also finds that Mullendore teaches elements [4] and [6] of claim 1. Final Act. 8–9 (citing Mullendore ¶¶ 4, 26, 56, 58, Figs. 3–6).

The Examiner concludes:

It would have been obvious to one of ordinary skill in the art, before the effective filing date of the invention, to have included the second device displaying information of the auction lot and information allowing the first user to bid on the auction lot to the invention of Scully. One of ordinary skill in the art would have been motivated to do so in order to sell the items at a faster pace.

Id. at 9 (citing Mullendore ¶ 5).

Appellant asserts that the Examiner improperly failed to consider the live auction aspect of the claims because the Examiner found that “[t]he live auctioning is not a functional aspect of the claims and presents intended use for [the] bidding/notifying claimed in the invention.” Appeal Br. 6 (citing Final Act. 3). Appellant contends that the “live auction bidding” aspects of claim 1 are positively recited and not recited as mere intended use and, therefore, must be considered in determining the patentability of the claims.

Id.

Appellant further argues that Scully teaches away from auctions and would not be modified to incorporate auction-specific aspects of Mullendore as found by the Examiner. Appeal Br. 9. In support of this argument, Appellant points to statements by the Examiner that the system in Scully is “not . . . an auction” and “Scully teaches away from auctions.” *Id.* (citing Final Act. 3). According to Appellant, “Scully specifically *does* ‘criticize, discredit, or otherwise discourage’ use of private and public auctions for asset sales and would thus not have been modified as proposed by the Examiner.” *Id.* at 10.

Appellant asserts that Scully is directed to “[a] system to manage, review, and process distressed real estate and other assets.” Appeal Br. 10 (citing Scully, Abstract, ¶¶ 2, 4, 42). Scully also states that:

banks and financial institutions find themselves holding a significant number of assets or properties, many of which are nonperforming or under-performing. Many of these institutions desire to sell or “offload” these assets, but at present, the mechanisms to do so, such as conducting a public or private auction, are not efficient at attracting a large number of potential purchasers or inventors or in maximizing the value of the asset or property for the institution. According, what is needed is a system that enables an institution to manage its assets or properties and present them to potential purchasers or inventors to maximum benefit.

Id. (quoting Scully ¶ 3). Therefore, according to Appellant, “Scully . . . would not have been modified in view of Mullendore to involve asset sales via auction lots available for live bidding” because Scully criticizes use of “auctions for asset sale[s] as being inefficient in attracting buyers and in

maximizing value and consequently provides its asset management system and method as an alternative, purportedly better solution.” *Id.* at 11.

Appellant further contends that the Examiner’s finding that Scully would have been modified in view of Mullendore “in order to sell the items at a faster pace” is improper because Scully does not want faster selling to happen. Appeal Br. 11. According to Appellant, Scully states that “what is needed is a system that enables an institution to manage its assets or properties and present them to potential purchasers or inventors to maximum benefit,” which is not possible by conducting an auction. *Id.* Appellant concludes that the “proposed reason for modifying Scully is thus in direct contradiction to Scully’s system and thus provides additional evidence that a person of ordinary skill in the art would not have made the proposed modification.” *Id.*

Similarly, Appellant contends that the Examiner’s proposed modifications to Scully to include auctions impermissibly changes the principle of Scully’s operation. Appeal Br. 12. Specifically, Appellant asserts:

Making Scully’s system be auction-based in view of Mullendore with assets being sold via auction bidding instead of via Scully’s described online selling system clearly changes how the assets are sold, the timing of when the assets are sold, and who is available as potential investors or buyers for the assets.

Id.

We find that Appellant has the better position. “[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements;

instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (alteration in original)). The Examiner’s given reason as to why one of ordinary skill in the art would combine the teachings of Scully and Mullendore is that such a person “would have been motivated to do so in order to sell the items at a faster pace.” Final Act. 9 (citing Mullendore ¶ 5). The Examiner fails to provide reasoning as to why one of skill in the art would want to sell items at a faster pace (as opposed to “maximizing the value of the asset” as discussed in Scully), nor how using the auction system of Mullendore would result in items being sold “at a faster pace.” This problem is confounded by the fact that Scully teaches that auctions “are not efficient at attracting a large number of potential purchasers or investors or in maximizing the value of the asset or property.” Scully ¶ 3.

Furthermore, the Examiner has not sufficiently shown that combining the teachings of Scully and Mullendore would result in the limitations recited in claim 1. For example, limitation [4] of the claim requires that “in response to the receipt of the first input,” the first display “show[s] second information allowing the first user to enter the bid on the auction lot.” While the Examiner relies on Mullendore for teaching a display window where a bidder can bid for items, Mullendore does not teach that this display window is generated in response to a first input. We agree with Appellant that the rejection employs improper hindsight in combining the teachings of Scully and Mullendore. “We must still be careful not to allow hindsight

reconstruction of references to reach the claimed invention without any explanation as to how or why the references would be combined to produce the claimed invention.” *Innogenetics, N.V. v. Abbott Labs.*, 512 F.3d 1363, 1374 n.3 (Fed. Cir. 2008).

Thus, we do not sustain the Examiner’s rejections of claims 1–20 under 35 U.S.C. § 103 as being unpatentable over Scully in view of Mullendore.

CONCLUSION

For the reasons described herein and those already of record, we affirm the Examiner’s rejection of claims 1–20.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–20	101	Eligibility	1–20	
1–20	103	Scully, Mullendore		1–20
Overall Outcome			1–20	

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