



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

Table with 5 columns: APPLICATION NO., FILING DATE, FIRST NAMED INVENTOR, ATTORNEY DOCKET NO., CONFIRMATION NO.
13/554,476 07/20/2012 Stephen M. Dearing USPS.050A 8745

20995 7590 06/27/2019
KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

EXAMINER

RAVETTI, DANTE

ART UNIT PAPER NUMBER

3685

NOTIFICATION DATE DELIVERY MODE

06/27/2019

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jayna.cartee@knobbe.com
efiling@knobbe.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte STEPHEN M. DEARING, KULDIP K. GOYAL,
GARY C. REBLIN, and MARGARET L. CHOINIERE

Appeal 2017-008455
Application 13/554,476¹
Technology Center 3600

Before LARRY J. HUME, CATHERINE SHIANG, and
MICHAEL J. ENGLE, *Administrative Patent Judges*.

HUME, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) of the Final Rejection of claims 1–5, 7–21, and 43–45, which are all of the claims pending in the application. Appellants have canceled claim 6, and withdrawn claims 22–42 from consideration. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

¹ According to Appellants, the real party in interest is United States Postal Service of Washington, D.C. Br. 4.

STATEMENT OF THE CASE²

The Invention

Appellants' disclosed embodiments and claimed invention relate to a "system and method for retrieving content associated with distribution items." Spec. ¶ 1.

Exemplary Claim

Claim 1, reproduced below, is representative of the subject matter on appeal (*emphases* added to contested prior-art limitations):

1. A computerized method comprising:
 - receiving a digital image of a portion of a distribution item captured via a computing device following a physical delivery of the distribution item to a recipient identified on the distribution item;*
 - identifying, using a processor, an information item shown in the digital image of the portion of the distribution item;*
 - identifying a type for the information item;
 - extracting a data item from the digital image using the type;
 - decoding the data item using the type to generate a set of attributes of the distribution item;
 - retrieving, over a network accessed by the computing device, content associated with a sender of the distribution item using an attribute included in the set of attributes; and

² Our decision relies upon Appellants' Appeal Brief ("Br.," filed Oct. 21, 2016); Examiner's Answer ("Ans.," mailed Feb. 21, 2017); Final Office Action ("Final Act.," mailed May 26, 2016); and the original Specification ("Spec.," filed July 20, 2012) (claiming benefit of US 61/510,456, filed July 21, 2011, and US 61/512,343, filed July 27, 2011). Appellants did not file a Reply Brief in response to the factual findings and legal conclusions in the Examiner's Answer.

causing display of the content to the recipient via a user interface on the computing device, the content being associated with the sender of the distribution item.

Prior Art

The Examiner relies upon the following prior art as evidence in rejecting the claims on appeal:

| | | |
|----------------------------------|--------------------|---------------|
| Ulvr et al. (“Ulvr”) | US 5,602,382 | Feb. 11, 1997 |
| Rosenblatt et al. (“Rosenblatt”) | US 2010/0174599 A1 | July 8, 2010 |

Rejections on Appeal

R1. Claims 1–5, 7–21, and 43–45 stand rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. Final Act. 7–13.

R2. Claims 1–5, 7–21, and 43–45 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Final Act. 13–14.

R3. Claims 1–5, 7–21, and 43–45 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Final Act. 14–18.

R4. Claims 1–5, 7–21, and 43–45 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Ulvr and Rosenblatt. Final Act. 18–28.

CLAIM GROUPING

Based on Appellants’ arguments (Br. 7–26) and our discretion under 37 C.F.R. § 41.37(c)(1)(iv), we decide the appeal of patent-ineligible subject matter Rejection R1 of claims 1–5, 7–21, and 43–45 on the basis of representative claim 1; we decide the appeal of written description Rejection

R2 of claims 1–5, 7–21, and 43–45 on the basis of representative claim 1; we decide the appeal of indefiniteness Rejection R3 of claims 1–5, 7–21, and 43–45 on the basis of representative claim 1; and we decide the appeal of obviousness Rejection R4 of claims 1, 3–5, 7–12, 14, 16–21, and 43 on the basis of representative claim 1. We address Rejection R4 of separately argued claims 2, 13, 15, 44, and 45, *infra*.

Remaining claims in Rejections R1–R4, not argued separately, stand or fall with the respective independent claim from which they depend.³

ISSUES AND ANALYSIS

In reaching this decision, we consider all evidence presented and all arguments actually made by Appellants. To the extent Appellants have not advanced separate, substantive arguments for particular claims, or other issues, such arguments are waived. 37 C.F.R. § 41.37(c)(1)(iv).

Based upon our *de novo* review of the record in light of recent Revised Guidance⁴ with respect to patent-eligible subject matter rejections under 35 U.S.C. § 101, we reverse Rejection R1 of claims 1–5, 7–21, and 43–45 for the specific reasons discussed below. Further, based upon our review of the record, we are persuaded by particular arguments advanced by

³ “Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately.” 37 C.F.R. § 41.37(c)(1)(iv). In addition, when Appellants do not separately argue the patentability of dependent claims, the claims stand or fall with the claims from which they depend. *In re King*, 801 F.2d 1324, 1325 (Fed. Cir. 1986).

⁴ *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Revised Guidance”).

Appellants with respect to Rejections R2 and R3 of claims 1–5, 7–21, and 43–45 under 35 U.S.C. § 112, first and second paragraphs, respectively, for the specific reasons discussed below.

However, we disagree with Appellants’ arguments with respect to Rejection R4 of claims 1–5, 7–21, and 43–45 under 35 U.S.C. § 103(a) and, unless otherwise noted, we incorporate by reference herein and adopt as our own: (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken, and (2) the reasons and rebuttals set forth in the Examiner’s Answer in response to Appellants’ arguments.

We highlight and address specific findings and arguments regarding claim 1 for emphasis as follows.

1. § 101 Rejection R1 of Claims 1–5, 7–21, and 43–45

Issue 1

Appellants argue (Br. 7–16) the Examiner’s rejection of claim 1 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter is in error. These contentions present us with the following issue:

Under the USPTO’s Revised Guidance, informed by our governing case law concerning 35 U.S.C. § 101, is claim 1 patent-ineligible under § 101?

PRINCIPLES OF LAW

A. 35 U.S.C. § 101

“Eligibility under 35 U.S.C. § 101 is a question of law, based on underlying facts.” *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1166 (Fed. Cir. 2018).

An invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101.⁵ However, the Supreme Court has long interpreted 35 U.S.C. § 101 to include implicit exceptions: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 70 (2012) (brackets in original) (citing *Diamond v. Diehr*, 450 U.S. 175, 185 (1981)).

In determining whether a claim falls within an excluded category, we are guided by the Supreme Court’s two-step framework, described in *Mayo* and *Alice*. *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 217–18 (2014) (citing *Mayo*, 566 U.S. at 75–77). In accordance with that framework, we first determine what concept the claim is “directed to.” *See Alice*, 573 U.S. at 219 (“On their face, the claims before us are drawn to the concept of intermediated settlement, *i.e.*, the use of a third party to mitigate settlement risk.”); *see also Bilski v. Kappos*, 561 U.S. 593, 611 (2010) (“Claims 1 and 4 in petitioners’ application explain the basic concept of hedging, or protecting against risk.”).

Concepts determined to be abstract ideas, and thus patent ineligible, include certain methods of organizing human activity, such as fundamental economic practices (*Alice*, 573 U.S. at 219–20; *Bilski*, 561 U.S. at 611); mathematical formulas (*Parker v. Flook*, 437 U.S. 584, 594–95 (1978)); and mental processes (*Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)). Concepts

⁵ This threshold analysis of whether a claim is directed to one of the four statutory categories of invention, *i.e.*, a process, machine, manufacture, or composition of matter, is referred to as “*Step 1*” in the USPTO’s patent-eligibility analysis under § 101. MPEP § 2106.

determined to be patent eligible include physical and chemical processes, such as “molding rubber products” (*Diehr*, 450 U.S. at 191); “tanning, dyeing, making water-proof cloth, vulcanizing India rubber, smelting ores” (*id.* at 182 n.7 (quoting *Corning v. Burden*, 56 U.S. 252, 267–68 (1854))); and manufacturing flour (*Benson*, 409 U.S. at 69 (citing *Cochrane v. Deener*, 94 U.S. 780, 785 (1876))).

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

Abstract ideas may include, but are not limited to, fundamental economic practices, methods of organizing human activities, and mathematical formulas or relationships. *Alice*, 573 U.S. at 217–21. Under this guidance, we must therefore ensure at step one that we articulate what the claims are directed to with enough specificity to ensure the step one

inquiry is meaningful. *Id.* at 217 (“[W]e tread carefully in construing this exclusionary principle lest it swallow all of patent law.”).

If the claim is “directed to” an abstract idea, we turn to the second step 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. “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 Revised Guidance

The PTO recently published revised guidance in the Federal Register concerning the application of § 101. *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (January 7, 2019) (hereinafter “Revised Guidance”) (<https://www.govinfo.gov/content/pkg/FR-2019-01-07/pdf/2018-28282.pdf>).

Under the Revised Guidance, 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);⁶ and

⁶ Referred to as “*Revised Step 2A, Prong 1*” in the Revised Guidance (hereinafter “*Step 2A(i)*”).

(2) additional elements that integrate the judicial exception into a practical application (*see* Manual for Patent Examining Procedure (“MPEP”) §§ 2106.05(a)–(c), (e)–(h)).⁷
See Revised Guidance 52–53.

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

(3) adds a specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field (*see* MPEP § 2106.05(d)); or
(4) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.⁸
See Revised Guidance 56.

Step 2A(i) – Abstract Idea

Informed by our judicial precedent, the Revised Guidance extracts and synthesizes key concepts identified by the courts as abstract ideas to explain that the abstract idea exception includes the following groupings of subject matter, when recited as such in a claim limitation:

- (a) Mathematical concepts—mathematical relationships, mathematical formulas or equations, mathematical calculations;
- (b) Certain methods of organizing human activity — fundamental economic principles or practices (including hedging, insurance, mitigating risk); commercial or legal interactions (including agreements in the form of contracts; legal obligations; advertising, marketing or sales activities or

⁷ Referred to as “*Revised Step 2A, Prong 2*” in the Revised Guidance (hereinafter “*Step 2A(ii)*”).

⁸ Items (3) and (4) continue to be collectively referred to as “*Step 2B*” of the Supreme Court’s two-step framework, described in *Mayo* and *Alice*.

behaviors; business relations); managing personal behavior or relationships or interactions between people (including social activities, teaching, and following rules or instructions); and

(c) Mental processes—concepts performed in the human mind (including an observation, evaluation, judgment, opinion).

See Revised Guidance 52.

Under the Revised Guidance, if the claim does not recite a judicial exception (a law of nature, natural phenomenon, or subject matter within the enumerated groupings of abstract ideas above), then the claim is patent-eligible at *Step 2A(i)*. This determination concludes the eligibility analysis, except in situations identified in the Revised Guidance.⁹

However, if the claim recites a judicial exception (i.e., an abstract idea enumerated above, a law of nature, or a natural phenomenon), the claim requires further analysis for a practical application of the judicial exception in *Step 2A(ii)*.

Step 2A(ii) – Practical Application

If a claim recites a judicial exception in *Step 2A(i)*, we determine whether the recited judicial exception is integrated into a practical application of that exception in *Step 2A(ii)* by: (a) identifying whether there are any additional elements recited in the claim beyond the judicial exception(s); and (b) evaluating those additional elements individually and

⁹ In the rare circumstance in which an examiner believes a claim limitation that does not fall within the enumerated groupings of abstract ideas should nonetheless be treated as reciting an abstract idea, the procedure described in Section III.C of the Guidance for analyzing the claim should be followed. *See Revised Guidance, Section III.C.*

in combination to determine whether they integrate the exception into a practical application.

The seven identified “practical application” sections of the MPEP,¹⁰ cited in the Revised Guidance under *Step 2A(ii)*, are:

- (1) MPEP § 2106.05(a) Improvements to the Functioning of a Computer or To Any Other Technology or Technical Field
- (2) MPEP § 2106.05(b) Particular Machine
- (3) MPEP § 2106.05(c) Particular Transformation
- (4) MPEP § 2106.05(e) Other Meaningful Limitations
- (5) MPEP § 2106.05(f) Mere Instructions To Apply An Exception
- (6) MPEP § 2106.05(g) Insignificant Extra-Solution Activity
- (7) MPEP § 2106.05(h) Field of Use and Technological Environment

See Revised Guidance 55.

If the recited judicial exception is integrated into a practical application as determined under one or more of the MPEP sections cited above, then the claim is not directed to the judicial exception, and the patent-eligibility inquiry ends. *See Revised Guidance 54.* If not, then analysis proceeds to *Step 2B*.

¹⁰ *See* MPEP §§ 2106.05(a)–(c), (e)–(h). Citations to the MPEP herein refer to revision [R-08.2017]. Sections 2106.05(a), (b), (c), and (e) are indicative of integration into a practical application, while §§ 2106.05(f), (g), and (h) relate to limitations that are not indicative of integration into a practical application.

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

Under our reviewing courts’ precedent, it is possible that a claim that does not “integrate” a recited judicial exception under *Step 2A(ii)* is nonetheless patent eligible. For example, the claim may recite additional elements that render the claim patent eligible even though a judicial exception is recited in a separate claim element.¹¹ The Federal Circuit has held claims eligible at the second step of the *Alice/Mayo* test (USPTO *Step 2B*) because the additional elements recited in the claims provided “significantly more” than the recited judicial exception (e.g., because the additional elements were unconventional in combination).¹² Therefore, if a claim has been determined to be directed to a judicial exception under *Revised Step 2A*, we must also evaluate the additional elements individually and in combination under *Step 2B* to determine whether they provide an inventive concept (i.e., whether the additional elements amount to significantly more than the exception itself).¹³

Under the Revised Guidance, we must consider in *Step 2B* whether an additional element or combination of elements: (1) “Adds a specific

¹¹ See, e.g., *Diehr*, 450 U.S. at 187.

¹² See, e.g., *Amdocs (Isr.) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1300, 1304 (Fed. Cir. 2016); *BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1349–52 (Fed. Cir. 2016); *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1257–59 (Fed. Cir. 2014).

¹³ The patent eligibility inquiry may contain underlying issues of fact. *Mortg. Grader, Inc. v. First Choice Loan Servs. Inc.*, 811 F.3d 1314, 1325 (Fed. Cir. 2016). In particular, “[t]he question of whether a claim element or combination of elements is well-understood, routine and conventional to a skilled artisan in the relevant field is a question of fact.” *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1368 (Fed. Cir. 2018).

limitation or combination of limitations that are not well-understood, routine, conventional activity in the field, which is indicative that an inventive concept may be present;” or (2) “simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception, which is indicative that an inventive concept may not be present.” *See Revised Guidance, III.B.*¹⁴

In the *Step 2B* analysis, an additional element (or combination of elements) is not well-understood, routine, or conventional unless the Examiner finds an evidentiary basis, and expressly supports a rejection in writing with, one or more of the following:

1. A citation to an express statement in the specification or to a statement made by an applicant during prosecution that demonstrates the well-understood, routine, conventional nature of the additional element(s). . . .
2. A citation to one or more of the court decisions discussed in MPEP § 2106.05(d)(II) as noting the well-understood, routine, conventional nature of the additional element(s).

¹⁴ In accordance with existing *Step 2B* guidance, an Examiner’s finding that an additional element (or combination of elements) is well understood, routine, conventional activity must be supported with at least one of the four specific types of evidence required by the USPTO *Berkheimer* Memorandum, as shown above. For more information concerning evaluation of well-understood, routine, conventional activity, *see* MPEP § 2106.05(d), as modified by the USPTO *Berkheimer* Memorandum (USPTO Commissioner for Patents Memorandum dated Apr. 19, 2018, “Changes in Examination Procedure Pertaining to Subject Matter Eligibility, Recent Subject Matter Eligibility Decision (*Berkheimer v. HP, Inc.*)” (hereinafter “*Berkheimer Memo*”)).

3. A citation to a publication that demonstrates the well-understood, routine, conventional nature of the additional element(s). . . .

4. A statement that the examiner is taking official notice of the well-understood, routine, conventional nature of the additional element(s). . . .

See Berkheimer Memo.

The analysis in *Step 2B* further determines whether an additional element or combination of elements:

(a) Adds a specific limitation or combination of limitations that are not well-understood, routine, conventional activity in the field, which is indicative that an inventive concept may be present; or

(b) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception, which is indicative that an inventive concept may not be present.

Revised Guidance 56; *see also Berkheimer Memo.*

If the Examiner or the Board determines under *Step 2B* that an element (or combination of elements) amounts to significantly more than the exception itself, the claim is eligible, thereby concluding the eligibility analysis.

However, if a determination is made that the individual elements and combination of elements do not amount to significantly more than the exception itself, the claim is ineligible under *Step 2B*, and the claim should be rejected for lack of subject matter eligibility.

Analysis

Based upon our *de novo* review of the record in light of Revised Guidance with respect to patent-eligible subject matter rejections under 35 U.S.C. § 101, we reverse the rejection of claims 1–5, 7–21, and 43–45 for the specific reasons discussed below. We highlight and address specific findings and arguments regarding claim 1 for emphasis as follows.

Step 1 – Statutory Category

Claim 1, as a method (process) claim, recites one of the enumerated categories of eligible subject matter in 35 U.S.C. § 101. Therefore, the issue before us is whether the claim is directed to a judicial exception without significantly more.

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

The Examiner determined the exemplary claim 1 is generally directed to an “abstract idea . . . [and does] not seem to include any additional elements that are sufficient to amount to significantly more than the judicial exception.” Final Act. 3. The Examiner further concluded:

Appellant’s limitations reads upon an algorithm; therefore, Appellant’s limitations are directed to an abstract idea of decoding data (e.g. receiving, processing and storing).

Appellant’s claim does not seem to include additional elements that are sufficient to amount to significantly more than the judicial exception because the additional elements when considered both **individually** and **as an ordered combination** do not amount to significantly more than the abstract idea of processing data.

Ans. 6 (footnote omitted).

We find claim 1 does not recite the judicial exceptions of either natural phenomena or laws of nature. We evaluate, *de novo*, whether claim 1 recites an abstract idea based upon the Revised Guidance.

Claim 1 recites “a computerized method,” wherein the method includes the steps of:

(1) “[R]eceiving a digital image of a portion of a distribution item . . . following a physical delivery of the distribution item to a recipient identified on the distribution item.”

(2) “[I]dentifying . . . an information item shown in the digital image of the portion of the distribution item.”

(3) “[I]dentifying a type for the information item.”

(4) “[E]xtracting a data item from the digital image using the type.”

(5) “[D]ecoding the data item using the type to generate a set of attributes of the distribution item.”

(6) “[R]etrieving . . . content associated with a sender of the distribution item using an attribute included in the set of attributes.”

(7) “[C]ausing display of the content to the recipient . . . the content being associated with the sender of the distribution item.”

Claims App’x.

The Specification provides context as to what the claimed invention is directed to. In this case, the Specification discloses the invention “relates to using information affixed to a distribution item and methods and systems of processing distribution items using information affixed to a distribution item to link recipients with additional content and/or services associated with the distribution item.” Spec. ¶ 2.

Appellants' Abstract provides additional description of the invention:

Systems, methods and apparatus are disclosed for providing content associated with an information item on a distribution item using a computing device. In one aspect a method includes identifying an image of an information item on a distribution item. The method further includes processing, in a processor the image, to generate a data item determined by the information item. The method further includes decoding the data item to determine a set of attributes of the distribution item. The method further includes retrieving content associated with the distribution item using at least one of the attributes in the set of attributes. The method further includes delivering content associated with the distribution item.

Spec. 77.

Under the broadest reasonable interpretation standard,¹⁵ we conclude the claim as a whole recites steps that would ordinarily occur when analyzing and processing data associated with processing distribution items using information affixed to a distribution item. *See* Ans. 6. For example, “receiving [data]” (step (1)) and “displaying [data]” (step (7)) would be steps in most methods for processing and displaying data. Also, “identifying an information item” (step (2)), “identifying a type of the information item”

¹⁵ During prosecution, claims must be given their broadest reasonable interpretation when reading claim language in light of the Specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). Under this standard, we interpret claim terms using “the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant’s specification.” *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997).

(step (3)), “extracting a data item” (step (4)), and “decoding the data item” (step (5)) are common steps in a method for analyzing and processing data.

Thus, under *Step 2A(i)*, we generally agree with the Examiner that claim 1 recites an abstract idea, and we particularly conclude claim 1 recites certain methods of organizing human activity. Specifically, claim 1 recites a commercial interaction, i.e., advertising, marketing or sales activities or behaviors, which we further note may be performed without a computer using pen and paper. This type of activity, i.e., analyzing data in a commercial interaction as exemplified by steps (2) through (5) includes longstanding conduct that existed well before the advent of computers and the Internet, and could be carried out by a human with pen and paper. *See CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1375 (Fed. Cir. 2011).¹⁶

We conclude claim 1, under our Revised Guidance, recites a judicial exception of certain methods of organizing human activity, i.e., a

¹⁶ Our reviewing court recognizes that “[a]n abstract idea can generally be described at different levels of abstraction.” *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1240 (Fed. Cir. 2016). That need not and, in this case does not, “impact the patentability analysis.” *Id.* at 1241. Further, “[t]he Board’s slight revision of its abstract idea analysis does not impact the patentability analysis.” *Id.* Moreover, merely combining several abstract ideas does not render the combination any less abstract. *RecogniCorp, LLC v. Nintendo Co.*, 855 F.3d 1322, 1327 (Fed. Cir. 2017) (“Adding one abstract idea (math) to another abstract idea . . . does not render the claim non-abstract.”); *see also FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093–94 (Fed. Cir. 2016) (determining the pending claims were directed to a combination of abstract ideas).

commercial interaction (advertising, marketing or sales activities or behaviors), and thus an abstract idea.

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

If the claims recite a patent-ineligible concept, as we conclude above, we proceed to the “practical application” under *Step 2A(ii)* in which we determine whether the recited judicial exception is integrated into a practical application of that exception by: (a) identifying whether there are any additional elements recited in the claim beyond the judicial exception(s); and (b) evaluating those additional elements individually and in combination to determine whether they integrate the exception into a practical application.

As to the specific limitations, we find limitation (1) (“receiving”) recites insignificant data gathering. *See* MPEP § 2106.05(g). Data gathering, as performed by the steps or function in Appellants’ claims, is a classic example of insignificant extra-solution activity. *See, e.g., In re Bilski*, 545 F.3d 943, 963 (Fed. Cir. 2008) (en banc), *aff’d sub nom. Bilski v. Kappos*, 561 U.S. 593 (2010).

We also find limitation (7) (“displaying”) recites insignificant post solution activity. The Supreme Court guides that the “prohibition against patenting abstract ideas ‘cannot be circumvented . . . ’ [by] adding ‘insignificant postsolution activity.’” *Bilski*, 561 U.S. at 610–11 (quoting *Diehr*, 450 U.S. at 191–92). On this record, we are of the view that Appellants’ claims do not operate the recited generic computer components in an unconventional manner to achieve an improvement in computer functionality. *See* MPEP § 2106.05(a).

In addition to the abstract steps recited in limitations (2)–(5) identified in Step 2A(i), *supra*, claim 1 further recites limitation (6), i.e., “retrieving . . . content associated with a sender of the distribution item using an attribute included in the set of attributes.”

For the reasons discussed below, we conclude limitation (6) integrates the abstract idea into a practical application as determined under at least one of the MPEP sections cited above.¹⁷

Appellants argue:

The features recited in the claims specifically identify how to take an information item located on a physically delivered distribution item and efficiently extract data from the information item to identify and provide content via a computing device. No controlling jurisdiction has held that efficiently identifying content from an information item included on a distribution item and providing digital content to bridge the gap between a physical distribution item and a computing device, as recited in the claims, is directed to an abstract idea. Only when the meaningful details recited in the claims are ignored, does the claim begin to resemble information processing claims that have been found ineligible by the courts.

Br. 11–12.

In support of Appellants’ arguments, we note the Specification discloses:

[A]n image of an information item . . . affixed to a distribution item . . . is received and/or captured using a computing device

¹⁷ See, e.g., MPEP § 2106.05(a) “Improvements to the Functioning of a Computer or To Any Other Technology or Technical Field,” and § 2106.05(e) “Other Meaningful Limitations.”

. . . [that] interprets the image to generate data determined by the image of the information item

[T]he data is transmitted to a network service The computing device . . . receive[s] a response from the network service[,] . . . processes the message[,] and determines whether a content indicator has been received If a content indicator was received in the response from the network service . . . the content associated with the distribution item . . . may be displayed on the computing device.

Spec. ¶¶ 68–69.

We find Appellants’ argument persuasive that carrying out step (6) (“retrieving . . . content associated with a sender of the distribution item using an attribute included in the set of attributes”) provides improvements to the underlying technology or technical field, namely, systems for “processing distribution items using information affixed to a distribution item to link recipients with additional content and/or services associated with the distribution item,” as set forth in paragraph 2 of the Specification. *See* MPEP § 2106.05(a) or, alternatively, § 2106.05(e) “Other Meaningful Limitations.”

With respect to these other meaningful limitations, we find guidance in MPEP § 2106.05(e), which summarizes and relies upon our reviewing court’s holdings in *Diamond v. Diehr*, cited *supra*, and *Classen Immunotherapies, Inc. v. Biogen IDEC*, 659 F.3d 1057 (Fed. Cir. 2011) (decision on remand from the Supreme Court, which had vacated the lower court’s prior holding of ineligibility in view of *Bilski v. Kappos*).

In *Diehr*, the Court evaluated the additional non-abstract limitations, and found them to be meaningful, because they sufficiently limited the use of the (abstract idea) mathematical equation to the practical application of

molding rubber products. MPEP § 2106.05(e) (citing *Diehr*, 450 U.S. at 184, 187).

In *Classen*, the Court held that, although the analysis step was an abstract mental process that collected and compared known information, the (practical application) immunization step was meaningful because it integrated the results of the analysis into a specific and tangible method that resulted in the method “moving from abstract scientific principle to specific application.” MPEP § 2106.05(e) (citing *Classen*, 659 F.3d at 1066–68).

We find these other meaningful limitations identified above provide a technological improvement to systems for processing distribution items using affixed information. Br. 12. Accordingly, we conclude, when the claim is considered as a whole, the recited judicial exception is integrated into a practical application as determined under either MPEP §§ 2106.06(a) or 2106.05(e) cited above, such that claim 1 is patent-eligible. Because claim 1 is directed to a patent-eligible concept, this concludes the patent-eligibility inquiry.

Therefore, based upon the findings and legal conclusions above, on this record and in consideration of the Revised Guidance, we are persuaded the claims are directed to patent-eligible subject matter, such that we do not sustain the § 101 rejection of claim 1, and grouped claims 2–5, 7–21, and 43–45 which stand therewith. *See Claim Grouping, supra*.

2. § 112, First Paragraph, Written Description Rejection R2 of Claims 1–5, 7–21, and 43–45

Issue 2

Appellants argue (Br. 16–17) the Examiner’s rejection of claim 1 under 35 U.S.C. § 112, first paragraph, as lacking written description support is in error. These contentions present us with the following issue:

Did the Examiner err in rejecting claim 1’s limitation “extracting a data item from the digital image using the type” as lacking written description support?

Analysis

The Examiner finds, “Applicant’s Specification seems to be silent [regarding] a ‘nexus’ between the process of ‘extracting’ based on a ‘type.’ Applicant’s Specification recites that it ‘extracts’ the encoded information, without regard to type. Applicant’s Specific[ation] seems to be silent [with respect to] the ‘extraction’ of data based on a ‘type.’” Final Act. 14.

Appellants contend paragraph 61 of the Specification provides written description support for the limitation “extracting a data item from the digital image using the type.” Br. 16. In this regard, the Specification discloses:

[P]rocessing the information item [] may include capturing an image of at least a portion of the distribution item [] including the information item [] and performing image processing to extract information from the image. If the information item is an image, processing may include performing image recognition . . . [I]f an information item [] includes alphanumeric characters, processing may include capturing an image of the information item [] and performing optical character recognition (OCR) . . . [I]f an information item [] is stored within an RFID tag (not shown), processing

may include reading the contents of the RFID tag with an RFID tag reader in the computing device.

Spec. ¶ 61.

In response to Appellants' contentions, the Examiner reiterates the previous finding regarding the portions of the Specification referred to by Appellants for the written description support and finds, "Appellant's Specification seems to be silent [as to] the necessary steps and/or flowcharts necessary to teach, extracting a data item [from] the digital image using the type." Ans. 8 (emphasis omitted).

We disagree with the Examiner because paragraph 61 of the Specification discloses at least two different data item types for images (i.e., "alphanumeric characters" and "a barcode") and that "performing image processing to extract information from the image" is based on the data item type (e.g., "optical character recognition" for alphanumeric characters). Therefore, we find that Appellants' Specification provides written description support for the contested limitation in claim 1 of "extracting a data item from the digital image using the type."

Accordingly, based upon the findings above regarding the Specification's support for the contested limitation, on this record, we are persuaded of error in the Examiner's finding that claim 1 lacks written description support under § 112, first paragraph. Accordingly, we reverse the Examiner's written description Rejection R2 of claims 1–5, 7–21, and 43–45.

3. § 112, second paragraph, Rejection R3 of Claims 1–5, 7–21, and 43–45

Issue 3

Appellants argue (Br. 17–19) the Examiner’s rejection of claim 1 under 35 U.S.C. § 112, second paragraph, as being indefinite, is in error. These contentions present us with the following issue:

Did the Examiner err in rejecting claim 1 allegedly because the limitations “extracting a data item from the digital image using the type,” “decoding the data item using the type,” and “causing display of the content” under § 112, second paragraph, are indefinite?

Analysis

Similar to the written description Rejection R2, the Examiner finds:

Applicant’s Specification recites [sic] that it “extracts” the encoded information [] without regard to type. Applicant’s Specific[ation] seems to be silent [regarding] the “extraction” of data based on a “type.” Therefore, the scope of the claim is unclear and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

. . . [T]he scope of the claim is not clear where the Applicant recites, “decoding the data item . . . ;” however, the operational distinction between “decoding” and “extract” is not clear

. . . [T]he claim recites “causing display of the content” The scope of the claim is unclear since one of ordinary skill would not be able to ascertain what the positive step is since “causing” represents state rather than action.

Final Act. 15–17.

Appellants argue “extraction” of data based on a “type” is supported by the Specification, and “the Specification as filed recites different types of

information items and thus extracting data from an information item, as recited in the claims, is a distinct and separate step from decoding the data extracted,” and refer to paragraph 61 of the Specification for support.

Br. 17. Appellants contend “the Office Action errs in stating that ‘causing’ represents a state rather than an action [because c]ausing is an action word that generally means ‘to be the cause of’ or ‘bring about.’” Br. 18.

Further, the Specification discloses:

The information item [] may be any of items described above, such as an encoded value (e.g., a barcode), or as those described below . . . a computing device [] processes the information item . . . [t]he processing may include capturing information about the encoded value, and decoding or preparing the encoded value so that it may be used by a network service to determine information associated with the mail piece as will be further described below . . . [P]rocessing the information item [] may include capturing an image of at least a portion of the distribution item [] including the information item [] and performing image processing to extract information from the image.

Spec. ¶ 61.

In response to Appellants’ arguments, the Examiner reiterates:

[O]nce a “type” has been identified, the Appellant then extracts a data item from the digital image without having any prior established nexus between the identified type to the extracted data item. It is only “assumed” that the “extracted data” has a relationship with the “identified type.” Since Appellant’s Specification seems to be silent [sic] the necessary steps/flowcharts to describe this feature, the scope of the claim is unclear.

Ans. 9–10. Further, “[i]n reference to ‘extracting’ and ‘decoding’ . . . [t]he scope of the claim is unclear because the logical sequence of steps does not seem to be proper.” Ans. 11. Moreover, “[t]he Examiner would like to

point out that Appellant's limitation is not a positive recitation of a method step as Appellant's use of 'causing' represents [a] state rather than an action." Ans. 13.

We disagree with the Examiner regarding the Specification being unclear with respect to the extraction of data based on a type because, as we found above under written description Rejection R2, paragraph 61 of the Specification discloses and supports this limitation. Further, we disagree with the Examiner regarding the lack of operational distinction between "extracting" and "decoding" because Appellants' Specification at least in paragraph 61 describes the distinction between "extracting" (i.e., "capturing information about the encoded value") and "decoding" (i.e., "decoding or preparing the encoded value so that it may be used by a network service"), as well as the logical sequence between the two (i.e., "processing the information item [] may include capturing an image of at least a portion of the distribution item [] and performing image processing to extract information from the image"). Still further, we disagree with the Examiner's conclusion that "causing" represents a state instead of an action. *See, e.g.*, Spec. ¶¶ 63, 69.

Therefore, based upon the findings above, on this record, we are persuaded of error in the Examiner's conclusion the claim 1 limitations "extracting a data item from the digital image using the type," "decoding the data item using the type," and "causing display of the content" are indefinite under § 112, second paragraph, such that we do not sustain the Examiner's indefiniteness rejection of claim 1. Accordingly, we reverse the Examiner's indefiniteness Rejection R3 of claim 1 and grouped claims 2–5, 7–21, and 43–45, which stand therewith. *See Claim Grouping, supra.*

4. § 103 Rejection R4 of Claims 1–5, 7–21, and 43–45

Issue 4

Appellants argue (Br. 19–26) the Examiner’s rejection of claim 1 under 35 U.S.C. § 103(a) as being obvious over the combination of Ulvr and Rosenblatt is in error. These contentions present us with the following issue:

Did the Examiner (1) fail to present a proper reason to combine Ulvr and Rosenblatt in the manner suggested, and (2) err in finding the cited prior art combination of Ulvr and Rosenblatt teaches or suggests a method that includes, *inter alia*, the limitations of: “receiving a digital image of a portion of a distribution item captured via a computing device following a physical delivery of the distribution item; [and] identifying, using a processor, an information item shown in the digital image of the portion of the distribution item,” as recited in claim 1?

Analysis

(1) Appellants contend:

The Office Action fails to articulate “a finding that there was some teaching, suggestion, or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings” The references do not provide the alleged motivation and no further evidence is presented that “proving access to information” is in the knowledge generally available to one of ordinary skill in the art to modify the reference or to combine reference teachings. Even if “accessing information” is generally known, such a broad statement of motivation could be applied to support the combination of practically any references that include the word “data” or “information.”

Br. 20.

The Examiner concludes “it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Ulvr to include the features of Rosenblatt because information derived from digital images are used to provide access to other information.” Final Act. 20 (emphasis omitted).

In this regard, we agree with the Examiner’s motivation to combine Ulvr with Rosenblatt in the manner suggested because we find the claimed invention is merely a combination of old elements according to known methods. *See KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398 (2007). In *KSR*, the Court stated “[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *KSR*, 550 U.S. at 416.

When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill. . . . [A] court must ask whether the improvement is more than the predictable use of prior art elements according to their established functions.

Id. at 417.

We agree with the Examiner’s findings and conclusions, especially that the Final Office action provides proper motivation to combine Ulvr and Rosenblatt in the manner suggested.

(2) Appellants argue:

[N]owhere in . . . Ulvr cited in the Office Action, nor anywhere else in Ulvr, does the reference describe or suggest “receiving a digital image of a portion of a distribution item captured via a computing device following physical delivery of the distribution item” as recited in Claim 1. Nowhere does Ulvr include the phrase “digital image” or “image.”

Claim 1 further recites, in part, “identifying, using a processor, an information item shown in the digital image of the portion of the distribution item.” The Office Action cites the same portions of Ulvr as allegedly describing these features. . . . As Ulvr does not even mention digital images, Appellant respectfully submits that Ulvr cannot describe any further actions or processing thereof such as the “identifying, using a processor, an information item shown in the digital image of the portion of distribution item” recited in Claim 1.

Br. 20–21.

Appellants’ contention does not persuade us of error on the part of the Examiner because Appellants are responding to the rejection by attacking the references separately, even though the rejection is based on the combined teachings of the references. Nonobviousness cannot be established by attacking the references individually when the rejection is predicated upon a combination of prior art disclosures. *See In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986).

Moreover, in response to Appellants’ arguments, the Examiner finds:

The cited prior art of *Ulvr* teaches a postal bar code used on mail pieces that contains different elements of information read by the post office to process and track . . . [T]he cited prior art of *Rosenblatt* teaches a distributed dvd case cover, to a user, which may contain a barcode on that is scanned by a user . . . [and] the use of a barcode on the cover of a *magazine/book covers/inserts/mailers/mailed advertisements* where after receiving by the recipient, the received barcode may then be scanned by the recipient.

Ans. 15–16 (citations omitted).

We note Ulvr discloses, “[a]ccording to a broad aspect of the invention, a mail piece bears a bar codeword containing information.” Ulvr col. 1, ll. 66–67. Further, Rosenblatt discloses, “music, movies, or software, whose cases may include . . . the matrix barcode tag [T]he matrix barcode tag [] may be displayed prominently on the front [] of the DVD case [] to encourage users of the handheld device [] to scan . . . the matrix barcode tag [] prior to purchase.” Rosenblatt ¶ 275.

The test for obviousness is what the combined teachings of the prior art would have suggested to the hypothetical person of ordinary skill in the art. *In re Keller*, 642 F.2d 413, 425 (CCPA 1981).

We agree with the Examiner’s finding that the *combination* of Ulvr and Rosenblatt teaches or suggests “receiving a digital image of a portion of a distribution item captured via a computing device following a physical delivery of the distribution item; [and] identifying, using a processor, an information item shown in the digital image of the portion of the distribution item,” as recited in claim 1. While Ulvr teaches a piece of mail (i.e., a distribution item) bearing a bar code (i.e., an information item), Rosenblatt teaches a scannable barcode in an item (i.e., an information item in the digital image of the portion of the distribution item).

We agree with the Examiner’s findings and legal conclusions that the combination of Ulvr and Rosenblatt teaches or suggests the contested limitations of representative claim 1. We further note Appellants have not filed a Reply Brief to rebut the Examiner’s factual findings and legal conclusions.

Based upon the findings above, on this record, we are not persuaded of error in the Examiner's reliance on the cited prior art combination to teach or suggest the disputed limitation of claim 1, nor do we find error in the Examiner's resulting legal conclusion of obviousness. Therefore, we sustain the Examiner's obviousness rejection of independent claim 1, and grouped claims 3–5, 7–12, 14, 16–21, and 43, which fall therewith. *See Claim Grouping, supra.*

Rejection of Dependent Claims 2, 13, 15, 44, and 45

Appellants raised additional arguments for patentability of dependent claims 2, 13, 15, 44, and 45 rejected on the same basis as claim 1. Br. 21–25.

Claims 2 and 44

The Examiner states that, because of Appellants' choice to pursue method claims, the use of functional claiming, e.g., “to route and track” in claim 2 was

considered but [is] not given little patentable weight because [it fails] to add any structural limitations and are thereby regarded as intended use language. To be especially clear, all limitations have been considered. However a recitation of the intended use in a method claim must result in a structural difference between the claimed method and the prior art in order to patentably distinguish the claimed method from the prior art. If the prior art structure is capable of performing the intended use, then it reads on the claimed limitation.

Final Act. 21.

While the limitation identified by the Examiner may arguably be considered intended use, we are persuaded of Examiner error because, as

argued by Appellants, “the Office Action does not cite to any prior art in rejecting Claims 2 and 44 [but instead] states that ‘all limitations have been considered’ and yet no rejection over any reference is presented.” Br. 21. In particular, we note, the Examiner provides no citation to any prior art of record for the recitation of “receiving the information item from a distribution entity,” as recited in claim 2, and as similarly recited in dependent claim 44.

Therefore, we do not sustain the Examiner’s rejection of dependent claims 2 and 44.

Claim 13

The Examiner concluded the recitation in claim 13 of “‘wherein the barcode comprises at least one of an intelligent mail barcode and a height modulated barcode including four states, wherein the intelligent mail barcode includes encoded tracking information and encoded routing information’ does not have patentable weight because the language is an example of non-functional descriptive material.” Final Act. 24 (underlining and footnotes omitted).

Appellants present arguments against the Examiner’s conclusion that the recited information (i.e., encoded tracking information and encoded routing information) “has a functional relationship with the claimed features and thus should be given patentable weight.” Br. 22. However, we are not persuaded by Appellants’ arguments because the exact type of information recited in claim 13 does not alter the underlying steps of “identifying a barcode” and “generating a character string using the barcode,” as recited in dependent claim 3 from which claim 13 depends.

As a matter of claim construction, we agree with the Examiner’s claim analysis, as indicated in the Final Action. *Id.*, n.9. (citing various holdings of our reviewing court). Moreover, the Patent Trial and Appeal Board (PTAB) has provided guidance in decisions regarding claims that differ from the prior art based only on non-functional descriptive material (NFD)M) which is data. *See Ex parte Nehls*, 88 USPQ2d 1883, 1889 (BPAI 2008) (precedential) (“[T]he nature of the information being manipulated does not lend patentability to an otherwise unpatentable computer-implemented product or process”); *Ex parte Mathias*, 84 USPQ2d 1276, 1279 (BPAI 2005) (informative), *aff’d*, 191 F. App’x 959 (Fed. Cir. 2006) (Rule 36) (“[N]onfunctional descriptive material cannot lend patentability to an invention that would have otherwise been anticipated by the prior art”); *Ex parte Curry*, 84 USPQ2d 1272, 1274 (BPAI 2005) (informative), *aff’d*, No. 06-1003 (Fed. Cir. June 12, 2006) (Rule 36) (“Nonfunctional descriptive material cannot render nonobvious an invention that would have otherwise been obvious”).

Therefore, on this record, we affirm the Examiner’s rejection of dependent claim 13.

Claims 15 and 45

On this record, and in view of the Examiner’s findings (Final Act. 25, 27; Ans. 20–21), which we adopt as our own herein by reference, we are not persuaded by Appellants’ arguments that the Examiner erred in rejecting claims 15 and 45. Br. 23–25. We find the Examiner has rebutted each of those arguments in the Answer by a preponderance of the evidence. .

Therefore, we sustain the rejection of claims 15 and 45, and further note Appellants have not filed a Reply Brief to rebut the Examiner's findings and legal conclusions.

CONCLUSIONS

(1) Under our Revised Guidance, governed by relevant case law, claims 1–5, 7–21, and 43–45 in Rejection R1 are patent-eligible under 35 U.S.C. § 101, and we do not sustain the rejection.

(2) The Examiner erred with respect to written description Rejection R2 of claims 1–5, 7–21, and 43–45 under 35 U.S.C. § 112, first paragraph, and we do not sustain the rejection.

(3) The Examiner erred with respect to indefiniteness Rejection R3 of claims 1–5, 7–21, and 43–45 under 35 U.S.C. § 112, second paragraph, and we do not sustain the rejection.

(4) The Examiner did not err with respect to obviousness Rejection R4 of claims 1, 3–5, 7–21, 43, and 45 under 35 U.S.C. § 103(a) over the cited prior art combination of record, and we sustain the rejection.

(5) The Examiner erred with respect to obviousness Rejection R4 of claims 2 and 44 under 35 U.S.C. § 103(a) over the cited prior art combination of record, and we do not sustain the rejection.

DECISION

We affirm the Examiner's decision rejecting claims 1, 3–5, 7–21, 43, and 45.

We reverse the Examiner's decision rejecting claims 2 and 44.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv). *See* 37 C.F.R. § 41.50(f).

AFFIRMED-IN-PART