

2015 WL 5578687 (Patent Tr. & App. Bd.)

Patent Trial and Appeal Board

Patent and Trademark Office (P.T.O.)

EX PARTE CYRIAC J. WEGMAN III<sup>1</sup>

Appeal 2013-008168

[Application 12/765,954](#)

Technology Center 2100

September 18, 2015

\*1 Before JOHN G. NEW, JEFFREY A. STEPHENS, and NORMAN H. BEAMER  
Administrative Patent Judges  
NEW  
Administrative Patent Judge

## DECISION ON APPEAL

### SUMMARY

Appellant files this appeal under [35 U.S.C. § 134\(a\)](#) from the Examiner's Final Rejection of claims 1-15. Specifically, claims 1-5 and 8-14 stand rejected as unpatentable under [35 U.S.C. § 101](#) as being directed to non-statutory subject matter.

Claims 1-5 stand rejected as unpatentable under [35 U.S.C. § 102\(b\)](#) as being anticipated by Korchinski ([US 2007/0100475 A1](#), May 3, 2007) (“Korchinski”).

Claims 6-15 stand rejected as unpatentable under [35 U.S.C. § 103\(a\)](#) as being obvious over the combination of Korchinski and Levinson et al. ([US 2005/0089923 A9](#), April 28, 2005) (“Levinson”).

We have jurisdiction under [35 U.S.C. § 6\(b\)](#).

We AFFIRM.

### NATURE OF THE CLAIMED INVENTION

Appellant's invention is directed to a method for providing an empirical model of a defined space comprising steps of: (1) defining the desired space; (2) describing at least a portion of the defined space with multiple correlated dimensions; (3) reducing the dimensionality of the defined portion; (4) combining the described portion with the remaining portion of the defined space; (5) creating a hypothetical model of the defined space; (6) selecting points of interest in the combination; (7) producing real and/or virtual objects associated with at least a portion of the selected points, analyzing at least a portion of the produced objects; and (8) calculating coefficients for the hypothetical model according to the analysis. Abstract.

### REPRESENTATIVE CLAIM

Claim 1 is representative of the claims on appeal and recites:

1. A method for providing an empirical model of a defined space comprising steps of:

- a. defining the desired space;
- b. describing at least a portion of the defined space with multiple correlated dimensions;
- c. reducing the dimensionality of the described portion;
- d. combining the described portion with the remaining portion of the defined space;
- e. creating a hypothetical model of the defined space; and
- f. calculating coefficients for the hypothetical model according to an analysis of real and/or or virtual objects.

\*2 App. Br. 5.

## ISSUES AND ANALYSES

### *Issue 1*

Appellant argues the Examiner erred in finding claims 1-5 and 8-14 are unpatentable under 35 U.S.C. § 101 as being directed to nonstatutory subject matter. App. Br. 2.

### *Analysis*

In the Final Rejection and in the Answer, the Examiner employs the Section 101 analysis set forth by the PTO subsequent to the Supreme Court's decision in *Bilski v. Kappos*, 561 U.S. 593 (2010). See Final Act. 2 (citing *Interim Guidance for Determining Subject Matter Eligibility for Process Claims in View of Bilski v. Kappos*, Federal Register, Vol. 75, No. 143, 43922-28). However, in the wake of the Supreme Court's more recent decisions in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 132 S.Ct. 1289 (2012) and *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S.Ct. 2347 (2014), the Office has issued new interim guidelines with respect to analyses of patentability under 35 U.S.C. § 101. See *Preliminary Examination Instructions in view of the Supreme Court Decision in Alice Corporation Pty. Ltd. v. CLS Bank International, et al.* (June 25, 2014), available at [http://www.uspto.gov/sites/default/files/patents/announce/alice\\_pec\\_25jun2014.pdf](http://www.uspto.gov/sites/default/files/patents/announce/alice_pec_25jun2014.pdf) (last visited September 4, 2015) (the "Instructions"). We consequently apply this latter analytical framework in determining whether claim 1 is directed to patentable subject matter.

The basic analysis remains the same as that set forth in MPEP § 2106: first, determine whether the claimed invention is directed to one of the four statutory categories of invention, i.e., process, machine, manufacture, or composition of matter. Instructions 2. Next, if the claim does fall within one of the statutory categories, determine whether the claim is directed to a judicial exception (i.e., a law of nature, a natural phenomenon, and an abstract idea) using the two-part analysis described *infra. Id.*

Appellant argues the Examiner finds claim 1 is directed toward a method for providing an empirical model in which a hypothetical model is created and coefficients are calculated for the model. Reply Br. 2-3. Appellant construes this statement as the identification by the Office of the fundamental idea towards which claim 1 is directed. *Id.* at 3.

We agree with Appellant that claim 1 is directed to a method (i.e., a process) for "providing an empirical model of a defined space" by a series of steps. We consequently move to the two-step analysis set forth in the Instructions to determine whether claim 1 is directed to a judicial exception. Instructions 2.

\*3 The Instructions require the Office to first determine whether the claim is directed to an abstract idea. Instructions 2. *Alice* provides several broad examples of what might constitute an “abstract idea,” including: (1) fundamental economic practices; (2) certain methods of organizing human activities; (3) “an idea of itself”; and (4) mathematical relationships or formulae. *Id.* (citing *Alice*, 134 S.Ct. at 2350; 2356; 2350; 2350). Although by no means exhaustive, these examples provide a broad outline within which to frame our analysis.

Appellant argues claim 1 is much more specific than the broad abstract idea stated by the Examiner. Reply Br. 3. Appellant asserts claim 1 further requires the description of a portion of a defined space using multiple correlated dimensions: the described portion of the space is then altered in terms of the dimensionality of the description of the space. *Id.* Appellant argues the altered description of that portion is then combined with any remaining portion of the original space and a model is created. *Id.* According to Appellant, nothing in these steps may be considered necessary, routine, or conventional in terms of the fundamental abstraction set forth by the Examiner. *Id.*

We agree with Appellant. Claim 1 not only sets forth the steps emphasized by the Examiner, it further requires “calculating coefficients for the hypothetical model according to an analysis of real and/or or virtual objects.” In other words, the method of claim 1 requires performing an analysis of objects, either actual or virtual, and calculating coefficients for the model based upon that analysis. We find that these steps are sufficiently concrete as to set them outside the broad definition of abstract idea as set forth in *Alice*. Consequently, because we agree with Appellant that claim 1 is not directed to an abstract idea, we reverse the rejection of claims 1-5 and 8-14 as being unpatentable under 35 U.S.C. § 101.

#### *Issue 2*

Appellant argues the Examiner erred in finding Korchinski discloses the limitation of claim 1 reciting: “describing at least a portion of the defined space with multiple correlated dimensions; reducing the dimensionality of the described portion; and combining the described portion with the remaining portion of the defined space.” App. Br. 3.

#### *Analysis*

Appellant argues that although Korchinski discloses multiple independent variables and the number of independent variables is then reduced, there is no mention or suggestion of multiple correlated dimensions or the reduction of such dimensions. App. Br. 3. According to Appellant, Korchinski is silent with regard to the claimed description of the defined space, and is also silent with regard to combining the described portion of the space with the remainder of the defined space. *Id.* Consequently, Appellant argues, Korchinski does not anticipate claim 1. *Id.*

\*4 The Examiner finds Appellant's Specification does not explicitly define the claim term “dimension,” and, therefore adopts the broadest reasonable interpretation of the claim term consistent with the Specification. Ans. 4. The Examiner finds the Specification discloses: “[i]n this embodiment, principal component analysis may be used to reduce the dimensionality of the candidate description from the 140 molecular descriptors to about 34 descriptors without an undue loss of accuracy in describing the candidates.” *Id.* at 4-5 (citing Spec. 5). Consequently, the Examiner interprets a “dimension” as recited in the claim as being a “variable.” *Id.* at 5.

Claim 1 recites step b of “describing at least a portion of the defined space with multiple correlated dimensions.” The Examiner finds the Specification does not explicitly define the claim term “correlate” and adopts the dictionary definition of correlate as “a phenomenon that accompanies another phenomenon and is related in some way to it.” Ans. 5 (citing Merriam-Webster).

The Examiner finds Korchinski discloses a first-principles model which uses known equations to construct heat, mass, and component balance relationships. Ans. 5 (citing Korchinski ¶ 29). As such, the Examiner finds, Korchinski discloses multiple heat, mass, and component variables that are correlated because they are related to each other by way of the known equations. *Id.* The Examiner further finds that, in the process of reducing a model and its dimensionalities, whether or not the variables are

correlated is a factor with regards to whether or not that variable will be dropped. *Id.* (citing Korchinski ¶ 99) (“The residuals are compared against independent variables ... using ... cross correlation. Where significant relationships are suspected between the residuals and independent variables, these independent variables are included as additional terms in the dependent variable equations” (emphasis omitted)). Therefore, the Examiner finds, Korchinski discloses multiple correlated dimensions.

The Examiner further construes the claim limitation “reducing the dimensionality of the described portion” as meaning reducing the number of variables used in a model to describe a space. Ans. 5 (citing Spec. 5). The Examiner finds Korchinski discloses going from a complex first-principles model to a reduced model in which only certain variables will be selected. *Id.* (citing Korchinski ¶¶ 78, 99) (“variables may be dropped from the equations” (emphasis omitted)). The Examiner therefore finds Korchinski teaches reduction of variables, which are the dimensions in a model. *Id.*

\*5 Appellant replies that independent variables, as disclosed by Korchinski, are not necessarily analogous to correlated dimensions, hence the use of “independent” in the description. Reply Br. 3. Moreover, Appellant argues that although Korchinski teaches determining a residual value, values for the dependent variables are then evaluated using a statistical cross-correlation to identify relationships. *Id.* Appellant asserts that such a disclosure has nothing to do with defining a space in terms of multiple correlated dimensions, because it has nothing to do with defining a space. *Id.*

Finally, Appellant contends the independent variables, upon which Korchinski's model is constructed, are not equivalent to the multiple dimensions of the Applicant's model. Reply Br. 4. Appellant asserts that dropping non-equivalent variables, as disclosed by Korchinski, does not disclose reducing the dimensionality of the defined space as the definition of the space is not disclosed. *Id.*

We are not persuaded by Appellant's arguments. As an initial matter, we agree with the Examiner that the Examiner's definition of “dimension” as meaning “variable” is broadly reasonable in view of Appellant's Specification. *See In re Am. Acad. Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004) (“During examination, ‘claims ... are to be given their broadest reasonable interpretation consistent with the specification”). Similarly, we agree with the Examiner's adoption of the definition of “a phenomenon that accompanies another phenomenon and is related in some way to it.” *See* Ans. 5.

Furthermore, we agree with the Examiner's remaining reasoning and adopt it as our own. Appellant argues that Korchinski does not disclose defining space, but is rather directed to oil-refinery operations. *See* Reply Br. 4. However, Korchinski discloses, in general, methods and apparatus for generating a reduced nonlinear model, whose significant properties include accuracy, compact size, reliability, and speed. Korchinski, Abstract. Furthermore, Korchinski discloses that linear state space models for use in real-time predictive control are known in the art, and that Korchinski's model would prove advantageous in such operations. Korchinski ¶¶ 35, 44-45.

We consequently agree with the Examiner that Korchinski discloses the disputed limitations of claim 1 and we affirm the rejection of claims 1-5 under 35 U.S.C. § 102(b).

### *Issue 3*

Appellant argues the Examiner erred in finding the combination of Korchinski and Levinson teach or suggest “describing at least a portion of the defined space with multiple correlated dimensions, or describing candidate materials in terms of multiple correlated dimensions; reducing the dimensionality of the described portion or material; and combining the described portion or material with the remaining portion of the defined space.” App. Br. 3-4.

### *Analysis*

\*6 For claims 6-15, Appellant repeats the arguments made with respect to claim 1 *supra*, and argues further that Levinson fails to cure the deficiencies of Korchinski. App. Br. 4.

We have related *supra* our reasoning as to why we are not persuaded by Appellant's arguments, and we incorporate that reasoning by reference here. We consequently affirm the Examiner's rejection of claims 6-15 under [35 U.S.C. § 103\(a\)](#).

DECISION

The Examiner's rejection of claims 1-5 and 8-14 as unpatentable under [35 U.S.C. § 101](#) is reversed.

The Examiner's rejection of claims 1-5 as unpatentable under [35 U.S.C. § 102\(b\)](#) is affirmed.

The Examiner's rejection of claims 6-15 as unpatentable under [35 U.S.C. § 103\(a\)](#) is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under [37 C.F.R. § 1.136\(a\)\(1\)\(iv\)](#).

AFFIRMED

Footnotes

- 1 Appellant states the real party-in-interest is The Procter & Gamble Company of Cincinnati, Ohio. App. Br. 1.  
2015 WL 5578687 (Patent Tr. & App. Bd.)

2015 WL 5578704 (Patent Tr. & App. Bd.)

Patent Trial and Appeal Board

Patent and Trademark Office (P.T.O.)

EX PARTE JANICE M. SISSON AND AUDIE D. SISSON, SR.

Appeal 2013-009893

[Application 13/235,727](#)

Technology Center 3700

September 18, 2015

\*1 Before [LINDA E. HORNER](#), [STEFAN STAICOVICI](#), and MICHELLE R. OSINSKI  
Administrative Patent Judges  
OSINSKI  
Administrative Patent Judge

#### DECISION ON APPEAL

#### STATEMENT OF THE CASE

Janice M. Sisson and Audie D. Sisson, Sr. (Appellants) appeal under [35 U.S.C. § 134](#) from the Examiner's Final decision of October 29, 2012 ("Final Action"). The Final Action included various rejections<sup>1</sup> of claims 1, 3, 4, 6, and 8 and a rejection of claims 9-14 under [35 U.S.C. § 101](#) as being directed to non-statutory subject matter. We have jurisdiction under [35 U.S.C. § 6\(b\)](#).

Appellants have elected not to present arguments contesting the rejections of pending claims 1, 3, 4, 6, and 8. Br. 5, 8. The Board's rules provide that "[a]n appeal, when taken, is presumed to be taken from the rejection of all claims under rejection unless cancelled by an amendment filed by the applicant and entered by the Office." [37 C.F.R. § 41.31 \(c\) \(2014\)](#). By these rules, this appeal includes an appeal of the rejections of claims 1, 3, 4, 6, and 8. Presented with no arguments by Appellants contesting these rejections, we summarily affirm the rejections of claims 1, 3, 4, 6, and 8 as set forth in the Final Action from which this appeal is taken.

As to the remaining rejection of claims 9-14, we AFFIRM.

#### THE CLAIMED SUBJECT MATTER

Claim 9 is reproduced below and is representative of the claimed subject matter on appeal.

9. A method of playing a thematically decorative hide and seek game comprising:

placing a hideable component that is thematically consistent with a decorative motif in a proximate relationship at a predetermined home base with a set of blocks, each block having an alphabetical character displayed on at least one of its surfaces, the set of blocks capable of being arranged to spell at least two words;

arranging the set of blocks to spell the first word to indicate that the hideable component is ready to be hidden in plain sight;

hiding the hideable component in plain sight;

rearranging the set of blocks to spell out the second word at home base to indicate that the hideable component has been hidden in plain sight and is waiting to be found;

searching for the hideable component until found;

returning the hideable component to the home base; and rearranging the set of blocks to spell the first word to indicate that the hideable component is ready to be hidden again.

## OPINION

\*2 The Examiner rejects claims 9-14 under [35 U.S.C. §101](#) as being directed to non-statutory subject matter. Final Act. 2-3. The Examiner determines that the subject matter of claims 9-14 does not pass the machine-or-transformation test. *Id.* With respect to the machine prong of the test, the Examiner finds that the claims do not require the method to be implemented by a particular machine and the steps are performed by individual human beings. *Id.* at 3. With respect to the transformation prong of the test, the Examiner finds that the claims do not transform a particular article because “the game pieces remain as game pieces and the game area remains a game area” and the method simply involves “movement of game pieces to merely change their locations on a game area.” *Id.*

In addition to application of the machine-or-transformation test, the Examiner considers that the steps of independent claim 9 “are abstract ideas because they simply instruct how business should be conducted” and “constitute rules that may be applied for moving game pieces on a game area selected from infinite number of possible hypothetical ways that can be imagined to move game pieces.” *Id.* The Examiner acknowledges that independent claim 9 “recite[s] a number of physical steps of moving game pieces, but determines that nonetheless, Appellants' claimed method is “an attempt to claim a set of abstract ideas/rules for playing the claimed game” and as such, “is not patent eligible.” *Id.*

Under [35 U.S.C. §101](#), an invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” [35 U.S.C. § 101](#). The Supreme Court, however, has long interpreted [§ 101](#) to include an implicit exception: “Laws of nature, natural phenomena, and abstract ideas” are not patentable. *See, e.g., Alice Corp. Pty Ltd. v. CLS Bank Int'l*, [134 S. Ct. 2347](#), 2354 (2014). The Supreme Court has 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. *Id.* at 2355 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1296-97 (2012)).

According to the Supreme Court's framework, we must first determine whether the claims at issue are directed to one of those concepts (i.e., laws of nature, natural phenomena, or abstract ideas). If so, we must secondly “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” of the law of nature, natural phenomena, or abstract idea. *Id.* The Supreme Court characterizes the second step of the 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.’” *Id.*

\*3 In applying the framework set out in *Alice*, and as the first step of our analysis, we agree with the Examiner that the claims are directed to the abstract idea of rules for playing a game. Final Act. 3. The Examiner's determination that the claimed steps “simply instruct how business should be conducted” supports the Examiner's conclusion that claim 9 is directed to patent-ineligible subject matter. *Id.* We also view a method of playing a game as being akin to a “method of organizing human activity” that was at issue in *Alice* and further note that the Manual of Patent Examining Procedure identifies “a game defined as a set of rules” as an example of a claim not directed to one of the statutory categories of patent-eligible subject matter. *See Alice*, [134 S. Ct. at 2356](#) and [MPEP § 2106](#) (9th ed., Mar. 2014).

Having determined that the claims are directed to a patent-ineligible abstract idea of rules for playing a game, we must secondly consider the elements of the claims individually and as an ordered combination to determine whether the additional elements of the claims transform the nature of the claims into a patent-eligible application. As recognized by the Federal Circuit in *Ultramercial*, the machine-or-transformation test can be a “useful clue” in the second step of the *Alice* framework. *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014).

With respect to the machine-or-transformation test, Appellants concede that the claimed method is not tied to any particular machine. Br. 10. Appellants argue, however, that the method satisfies the transformation prong of the machine-or-transformation test. *Id.* at 10-11. In particular, Appellants argue that “there is simply no case law . . . that holds that a transformation is insufficient if it involves only a change in the location of a physical article.” *Id.* at 11. Thus, Appellants contend that their claimed hideable component is a physical article that “is transformed in both its physical location as well as between a state of being visible (i.e., found) and a state of being ‘hidden in plain sight’ (i.e., not found).” *Id.* at 12 (emphasis omitted). In addition, Appellants contend that their claimed set of blocks is a physical article that is transformed from “one physical state of the blocks” in which they are “configured to spell a first predetermined word” to “a second state” in which they “spell a second predetermined word.” *Id.* at 12-13.

**\*4** We are not persuaded by Appellants' argument that the hideable component is transformed by changing physical locations, nor that the set of blocks is transformed when rearranged between first and second configurations representing hidden and found states. The placement of the hideable component in different locations and/or the rearrangement of the set of blocks to form different words is akin to the “mere collection and organization of data” that has been found “insufficient to meet the transformation prong of the test.” *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1370 (2011). We agree with the Examiner that changes in the location and/or organization of the hideable component or the set of blocks does not result in a transformation of either of these physical articles. *See, e.g.*, Ans. 8 (“The [E]xaminer takes the position that in playing a board game[,] the game pieces remain as same old game pieces with no structural/physical change regardless of their location or position. In the current case[,] the game pieces including letter blocks remain letter blocks at the end of the game.”).

Having initially considered the machine-or-transformation test as a “useful clue” in the second step of the *Alice* framework, we further consider whether additional elements in the claim transform the nature of the claim into a patent-eligible application despite the machine-or-transformation test not being satisfied. Appellants argue that there is a “recitation of physical and tangible set of limitations that when considered as a whole, cannot be interpreted as an attempt to patent some idea in the abstract” and that the claimed steps are “explicit and quite tied to the physical components of the game as further recited.” Br. 15, 18. More particularly, Appellants argue that “[t]he steps limit the moves of the components in a number of ways,” namely, by configuring blocks to spell first and second words and limiting the location of the hideable component to a location that is “hidden-in-plain-sight” or “some finite number of locations within the playing space.” *Id.* at 15-16.

When a claim recites an abstract idea, however, it must include “‘additional features’ [that] must be more than ‘well-understood, routine, conventional activity.’” *Ultramercial*, 772 F.3d at 715 (citation omitted). “‘Simply appending conventional steps, specified at a high level of generality,’ was not ‘enough’ to supply an ‘inventive concept.’” *Alice*, 134 S. Ct. at 2357 (quoting *Mayo*, 132 S. Ct. at 1300, 1297, 1294). We are not persuaded by Appellants that rearranging blocks with alphabetical characters on them or hiding an object to be found are more than well-understood, routine, conventional activity in the playing of games for children, especially when the physical components of the game are specified at such a high level of generality. Accordingly, we are not persuaded that these limitations “add a degree of particularity,” so as “to ‘transform’ the claimed abstract idea into [] patent-eligible [subject matter]” both when considering the claim elements separately or as an ordered combination. *Alice*, 134 S. Ct. at 2357 (quoting *Mayo*, 132 S. Ct. at 1298). Instead, we agree with the Examiner that “while arguably reciting a number of physical steps of moving game pieces, [the claimed method] is viewed here as an attempt to claim a set of abstract ideas/rules for playing the claimed game.” Final Act. 3, 8; Ans. 4, 7.

**\*5** We have also considered Appellants' arguments that a myriad of patents have issued for methods of playing games. Br. 10-11, 14, and 18. The Court of Customs and Patent Appeals, predecessor court to the Court of Appeals for the Federal Circuit,

held that “[e]ach case is determined on its own merits. In reviewing specific rejections of specific claims, this court does not consider allowed claims in other applications or patents.” *In re Gyurik*, 596 F.2d 1012, 1018 n. 15 (CCPA 1979) (citation omitted). As our reviewing court directs, we will not consider the allowed claims in other patents when determining whether the present claims are directed to non-statutory subject matter. Accordingly, we are not persuaded of error by the Examiner.

For these reasons, we sustain the Examiner's decision to reject claims 9-14 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter.

#### DECISION

The Examiner's decision to reject claims 1 and 3 under 35 U.S.C. § 112, second paragraph, as indefinite, claims 1, 3, 4, 6, and 8 under 35 U.S.C. § 102(b) as anticipated by Torre, and claims 1, 3, 4, 6, and 8 under 35 U.S.C. § 103(a) as unpatentable over Torre and Hoffman is summarily affirmed.

The Examiner's decision to reject claims 9-14 under 35 U.S.C. § 101 as being directed to non-statutory subject matter is affirmed.

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

#### AFFIRMED

#### Footnotes

- 1 The Final Action included a rejection of claims 1 and 3 under 35 U.S.C. § 112, second paragraph, as being indefinite, a rejection of claims 1, 3, 4, 6, and 8 under 35 U.S.C. § 102(b) as anticipated by Torre (US 3,010,228; iss. Nov. 28, 1961), and a rejection of claims 1, 3, 4, 6, and 8 under 35 U.S.C. § 103(a) as unpatentable over Torre and Hoffman (US 5,496,179; iss. Mar. 5, 1996). Final Act. 3-6. 2015 WL 5578704 (Patent Tr. & App. Bd.)

2015 WL 5578661 (Patent Tr. & App. Bd.)

Patent Trial and Appeal Board

Patent and Trademark Office (P.T.O.)

EX PARTE FRANK V. GALLUCCI

Appeal 2013-005469

[Application 11/534,491](#)

Technology Center 2600

September 8, 2015

\*1 Before [MAHSHID D. SAADAT](#), CARL L. SILVERMAN, and ADAM J. PYONIN  
Administrative Patent Judges  
PYONIN  
Administrative Patent Judge

#### DECISION ON APPEAL

This is a decision on appeal under [35 U.S.C. § 134\(a\)](#) from a final rejection of claims 1 and 3-30. Claim 2 has been canceled. App. Br. 4. We have jurisdiction under [35 U.S.C. § 6\(b\)](#).

We AFFIRM.

#### STATEMENT OF THE CASE

##### *Introduction*

The invention is directed to “digital image sharing systems and methods which enable a sender to . . . send an image . . . without sending the recipient's email address to the server.” Spec. ¶ 1. Claims 1, 5, 13, 22, 23, and 24 are independent. Claim 1 is reproduced below with disputed limitations emphasized:

1. A digital image sharing system, comprising:

a server for storing one or more digital images;

a receiving device configured to communicate with the server;

a sending device configured to communicate with the server and the receiving device, wherein the sending device and the receiving device are separate devices; and

wherein:

*the sending device sends at least one digital image to the server, the digital image being stored on the server and identified by an image identifier generated by the server, the image identifier not including identifying information of the receiving device or a user of the receiving device;*

the server communicates the image identifier to the sending device;

*the sending device communicates the image identifier to the receiving device without communicating with the server; and*  
the receiving device uses the image identifier to retrieve the at least one digital image from the server.

App. Br. 20 (Claims Appendix).

### *The Rejection*

Claims 1 and 3-30 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Ishitani ([US 2001/0056470 A1](#); Dec. 27, 2001). Ans. 5.

### ISSUES

Appellant's arguments present us with the following issues:

A. Did the Examiner err in rejecting independent claim 1, because “the Ishitani reference does not [disclose] a digital image sharing system comprising a server that communicates an image identifier to a sending device for further communication by the sending device to the receiving device as recited in claim 1”? App. Br. 12.

B. Did the Examiner err in rejecting dependent claims 25-30, because “the Ishitani reference does not [disclose] a system or machine executable instructions wherein the sending device sends at least one digital image to the server without communicating identifying information of the receiving device or a user of the receiving device”? App. Br. 17.

### ANALYSIS

\*2 We adopt the Examiner's findings and conclusions (*see* Ans. 5-9) as our own, and we add the following primarily for emphasis.

#### *A. Independent Claim 1*

Appellant argues the Examiner erred in rejecting claim 1 because Ishitani does not disclose an image identifier (ID) generated by a server and sent from a sending device to the receiving device, as claimed. *See* App. Br. 12-13. Appellant contends that, instead, “the Ishitani reference discloses that the generated ID and email message from the sending device (1) is communicated by the server to the receiving device (3)” (App. Br. 12, *see also* Reply Br. 3) and, separately, “that the sending device (1) [of Ishitani] is capable of generating the ID and sending the ID to the data server (6)” (Reply Br. 2, *see also* App. Br. 13).

We are not persuaded the Examiner erred. Ishitani shows each of the server, the receiving device, and the sending device as recited in claim 1, in which “the actual attached data representing image, voice/sound or the like is not sent, but the ID substituted for the attached data is sent.” *See* Ishitani ¶ 63 and Fig. 1, as cited in Ans. 5. The Examiner correctly finds Ishitani discloses the sending device sends an image to the server, and sends a corresponding image identifier to the receiving device without using the server. *See* Ans. 5; Ishitani ¶¶ 46-49, Fig. 1 (emails are sent through email server 5 rather than data server 6). We further agree with the Examiner that Ishitani discloses the server generates the image identifier without identifying information. *See* Ans. 5, 8; Ishitani ¶¶ 42, 46.

Appellant argues Ishitani does not disclose each limitation as recited in claim 1; however, Appellant separately argues each paragraph of Ishitani. *See* App. Br. 12-13. Appellant has not persuasively shown that Ishitani fails to show every element of the

claimed invention, arranged as in the claim. Rather, we find the Examiner has identified disclosures of Ishitani that relate to each other and are applicable to the messaging system shown in Figure 1.<sup>1</sup> *See Ans. 8. cf. Wm. Wrigley Jr. Co. v. Cadbury Adams USA LLC*, 683 F.3d 1356, 1361 (Fed. Cir. 2012) (finding that, although a prior art reference discloses a number of different combinations of compounds for a chewing gum composition, one of the combinations anticipates the challenged claim when the combinations are all meant to be used in a single product).

Accordingly, the Examiner's findings show that the cited portions of Ishitani disclose the limitations of claim 1 “without *any* need for picking, choosing, and combining various disclosures not directly related to each other.” *In re Arkley*, 455 F.2d 586, 587 (Fed. Cir. 1972). We do not find the Examiner erred in rejecting independent claim 1, or claims 3-24, which are not separately argued with particularity. *See App. Br. 14-16, see also 37 C.F.R. §41.37(c)(1)(iv)*.

#### *B. Dependent Claims 25-30*

\*3 Appellant argues the Examiner erred in rejecting dependent claims 25-30 because “the Ishitani reference does not teach or suggest a system or machine executable instructions wherein the sending device sends at least one digital image to the server without communicating identifying information of the receiving device or a user of the receiving device.” App. Br. 17. We are not persuaded of error. As discussed above with respect to independent claim 1, we agree with the Examiner that Ishitani discloses a sending device that sends an image to the server, for generation of an image identifier. *See Ans. 5*. We further agree with the Examiner that Ishitani's disclosed situation is encompassed by the claim recitation of “without communicating identifying information of the receiving device or a user of the receiving device” (*See Ans. 7*). In that regard, Ishitani specifically discloses the sending device uses:

an indirect transmission/reception method that does not attach real data to the main body text data, but once places the data to be sent on a server or the like from which a recipient can acquire data, and then specifies in the main body of an e-mail a method for accessing the data on the server (usually represented by an Internet URL in general) or attaches a URL.

Ishitani ¶ 6. Thus, Ishitani discloses the sending device places the data (e.g., an image) on the server, and separately sends an e-mail to the receiving device; the server does not receive the e-mail itself. Accordingly, we are not persuaded the Examiner erred in rejecting dependent claims 25-30.

### DECISION<sup>2</sup>

We affirm the Examiner's rejection of claims 1 and 3-30.

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)*.

### AFFIRMED

#### Footnotes

- 1 Separately, we note Ishitani further discusses, with respect to figure 1, a system for transmitting messages with image identifiers, wherein the messages are sent without communicating with a server such as the data managing server. *See Ishitani Fig. 1 and ¶¶ 95-102*.
- 2 In the event of further prosecution, the Examiner is invited to evaluate the claims for compliance with the requirements of *35 U.S.C. § 101* in view of *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, *134 S. Ct. 2347* (2014), and the “2014 Interim Guidance on Patent Subject Matter Eligibility,” *79 Fed. Reg. 241, 74618* (Dec. 16, 2014).

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2015 WL 5578648 (Patent Tr. & App. Bd.)

Patent Trial and Appeal Board

Patent and Trademark Office (P.T.O.)

EX PARTE CHARLES J. ARCHER AND GARY R. RICARD

Appeal 2013-002416

[Application 12/359,383](#)

Technology Center 2100

September 9, 2015

\*1 Before KEN BARRETT, CARL W. WHITEHEAD JR. and JEFFREY S. SMITH  
Administrative Patent Judges  
WHITEHEAD JR.  
Administrative Patent Judge

#### DECISION ON APPEAL

#### STATEMENT OF THE CASE

Appellant is appealing the final rejection of claims 1-18 under [35 U.S.C. § 134\(a\)](#). Appeal Brief 2. We have jurisdiction under [35 U.S.C. § 6\(b\)](#) (2012).

We reverse.

#### *Introduction*

The invention is directed to “administering registered virtual addresses in a hybrid computing environment.” Specification 1.

#### *Representative Claim (disputed limitations emphasized)*

1. A method of administering registered virtual addresses in a hybrid computing environment, the hybrid computing environment comprising a host computer having a host computer architecture, an accelerator having an accelerator architecture, the accelerator architecture optimized, with respect to the host computer architecture, for speed of execution of a particular class of computing functions, *the host computer and the accelerator connected to one another for data communications by a system level message passing module, the method comprising:*

*maintaining, by the system level message passing module, a cache of ranges of currently registered virtual addresses, the cache comprising entries associating a range of currently registered virtual addresses, a handle representing physical addresses mapped to the range of currently registered virtual addresses, and a counter identifying the number of virtual addresses in the range of currently registered virtual addresses that are currently in use;*

*determining, by the system level message passing module, whether to register ranges of virtual addresses in dependence upon the cache of ranges of currently registered virtual addresses; and*

determining, by the system level message passing module, whether to deregister ranges of virtual addresses in dependence upon the cache of ranges of currently registered virtual addresses.

### *Rejections on Appeal*

Claims 1-4, 7-10, and 13-16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Mathur (US Patent Number 7,418,574 B2; issued August 26, 2008), Kim (US Patent Application Publication 2009/0110326 A1; published April 30, 2009), Ang (US Patent Application Publication 2004/0221127 A1; published November 4, 2004), and Thaler (US Patent Number 5,983,329; issued November 9, 1999). Final Rejection 6-15.

\*2 Claims 5, 11, and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Mathur, Kim, Ang, Thaler, and Davis (US Patent Application Publication Number 2006/0224830 A1; published October 5, 2006). Final Rejection 15-16.

Claims 6, 12, and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Mathur, Kim, Ang, Thaler, Davis, and Martin (US Patent Number 6,658,522 B1; issued December 2, 2003). Final Rejection 17-18.

### ANALYSIS

Rather than reiterate the arguments of Appellants and the Examiner, we refer to the Appeal Brief (filed May 30, 2012), the Final Rejection (mailed January 27, 2012) and the Answer (mailed August 20, 2012) for the respective details. We have considered in this decision only those arguments Appellants actually raised in the Briefs.

Appellants argue Kim does not address the deficiencies of Mathur because Kim is not connected to accelerator architecture. Appeal Brief 8-9. The Examiner finds Kim teaches both the host computer and the accelerator in connection for data communications and relies upon paragraphs [0034, 0040, 0043, and 0044] for support. Final Rejection 7-8. The Examiner finds Appellants' Specification "describes the accelerator comprising Power Processing Element (PPE), with eight fully-functional co-processors called SPEs" along with other elements and concludes Kim's PPE 76 and associated elements discloses an accelerator. Answer 4-5; see Appeal Brief 9.

Appellants contend:

Applicants initially note that even if the image co-processor of Kim was analogous to the claimed accelerator, which it is not, Kim would still be deficient as a reference. The claims of the present application recite that the host computer and the accelerator are connected to one another for data communications by a system level message passing module. In contrast to what is claimed here, Kim's work station is connected directly to the image co-processor, with no indication that the work station and image co-processor are connected to one another for data communications by a system level message passing module. As such, Kim does not teach or suggest the claimed limitations.

Appeal Brief 9 (emphasis omitted).

We find Appellants' arguments persuasive. The Examiner cites four paragraphs from Kim without any specificity as to which of Kim's teachings supports the Examiner's rationale for combining Kim with Mathur to address the claimed invention. See Final Rejection 7-8. The fact that the claimed invention and the prior art share some of the same components is not sufficient to establish obviousness when the references as a whole fails to suggest the claimed invention.<sup>1</sup> The Examiner's reliance upon four separate references to reject claim 1 is not detrimental per se to satisfying the burden of presenting a prima facie case of obviousness. It is the lack of cohesiveness between the four references that fail to satisfy the burden of establishing obviousness.<sup>2</sup> Therefore we reverse the Examiner's obviousness rejection of claim 1, as well as, independent claims 7 and

13<sup>3</sup> having limitations commensurate in scope. We also reverse the Examiner's obviousness rejections of dependent claims 2-6, 8-12, and 14-18.

DECISION

\*3 The Examiner's 35 U.S.C. § 103(a) rejections of claims 1-18 are reversed.

REVERSED

Footnotes

- 1 The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. See *In re Kahn*, 441 F.3d 977, 987-88 (Fed. Cir. 2006), *In re Young*, 927 F.2d 588, 591 (Fed. Cir. 1991), and *In re Keller*, 642 F.2d 413, 425 (CCPA 1981).
- 2 “It is impermissible to use the claimed invention as an instruction manual or ‘template’ to piece together the teachings of the prior art so that the claimed invention is rendered obvious. . . .” *In re Fritch*, 972 F.2d 1260, 1266 (Fed. Cir. 1992) (internal citations omitted).
- 3 Should there be further prosecution of this application, the Examiner may wish to review the claims for compliance under 35 U.S.C. § 101 in light of the recently issued preliminary examination instructions on patent eligible subject matter. See “Preliminary Examination Instructions in view of the Supreme Court Decision in *Alice Corporation Pty. Ltd. v. CLS Bank International, et al.*” Memorandum to the Examining Corps, June 25, 2014. Available at [http://www.uspto.gov/pateiits/announce/alice\\_pec\\_25jun2014.pdf](http://www.uspto.gov/pateiits/announce/alice_pec_25jun2014.pdf). Independent claim 13 recites “a computer readable, recordable storage medium” The broadest reasonable interpretation of the “computer readable, recordable storage medium” language of independent claim 13, when read in light of Appellants' Specification, is inclusive of transitory propagating signals. See *Ex parte Mewherter*, 107 USPQ2d 1857, 1862 (PTAB 2013) (precedential).

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Patent Trial and Appeal Board

Patent and Trademark Office (P.T.O.)

EX PARTE BRUCE GORDON FULLER, BRIAN ALEXANDER WALL, KEVIN  
GEORGE GORDON, MARK DAVID HOBBS, AND MOHAMED SALEHMOHAMED

Appeal 2013-007397  
[Application 12/041,523](#)  
Technology Center 2100  
September 18, 2015

\*1 Before BRUCE R. WINSOR, WILLIAM M. FINK, and DANIEL J. GALLIGAN  
Administrative Patent Judges  
GALLIGAN  
Administrative Patent Judge

#### DECISION ON APPEAL

Appellants<sup>1</sup> seek our review under [35 U.S.C. § 134\(a\)](#) of the Examiner's final rejection of claims 1, 3, 11, 13, 21, and 23. We have jurisdiction under [35 U.S.C. § 6\(b\)](#). Claims 2, 4-10, 12, 14-20, 22, 24, and 25 are indicated to be directed to allowable subject matter. Final Act. 3; Ans. 3

We REVERSE.<sup>2</sup>

#### STATEMENT OF THE CASE

##### *Claims on Appeal*

Claims 1, 11, and 21 are independent claims. Claim 1 is reproduced below:

1. A method of operating a Human-Machine Interface (HMI) system to provide a plurality of graphical displays to a plurality of communication devices, the method comprising:

processing status data from a plurality of machine systems to generate display data for the graphical displays;

receiving selection information indicating a selected one of the communication devices and a selected one of the graphical displays, and in response, retrieving display parameters for the selected communication device and retrieving the display data for the selected graphical display;

processing the display data and the display parameters to display a first model of the selected communication device rendering the selected graphical display.

##### *Examiner's Rejection*

Claims 1, 3, 11, 13, 21, and 23 stand rejected under [35 U.S.C. § 102\(b\)](#) as anticipated by Acharya et al. ([US 2005/0036509 A1, Feb. 17, 2005 \(“Acharya”\)](#)). Final Act. 2-3.

## ANALYSIS

We have reviewed Appellants' arguments (App. Br. 7-9; Reply Br. 4-6), and we are persuaded the Examiner has not demonstrated Acharya anticipates claim 1.

In particular, the Examiner finds Acharya's projectors disclose the recited “machine systems” (Final Act. 2) and further finds “Acharya teaches a user connecting to a network and retrieving availability status of connected devices (Par. 54, Par. 78)” (Ans. 4). Paragraph 78 of Acharya states: “The status markers **920** for each display device may indicate the display devices' readiness or availability.” Acharya ¶ 78. Therefore, it appears the Examiner is interpreting the status of the projectors to disclose “status data from a plurality of machine systems.” The Examiner then finds Acharya discloses processing projector status data “in order to project images or video (generate display data for the graphical displays[]).” Ans. 4. However, the Examiner then equates a “selected Projector name” with “one of the graphical displays” and finds Acharya's teachings of “screen scraping” disclose “display[ing] a model of the selected communication device rendering the selected graphical display (Par. 44-45, Fig. 6, 9).” *Id.* The Examiner then finds:

\*2 User selects the *video or image, ie. graphical display*, selects the projector on which to display the video or image, and then screen scrapes the video or image being displayed on said projector to view on his own display by repainting the image. Screen scraping requires the projector to be of available status and when only a portion of the screen has changed information status information about a change may be transmitted so that only the changed data needs to be sent (Par. 46).

Ans. 4-5 (emphasis added). Here, it appears the Examiner is interpreting a selected “video or image” in Acharya as disclosing a “graphical display.” However, the Examiner has not explained adequately how this “graphical display” relates to the findings regarding status data from the projectors and the first step of claim 1, which recites “processing status data from a plurality of machine systems to generate display data for the graphical displays.” That is, the Examiner has not shown how Acharya discloses processing projector status data to generate display data for the selected video or images (graphical displays).

Based on the foregoing, we are constrained by the record to conclude the Examiner erred in rejecting claim 1 under [35 U.S.C. § 102\(b\)](#) as anticipated by Acharya. The Examiner rejected independent claims 11 and 21 “under the same rationale” because they “are substantially similar to Claim 1.” Final Act. 3. Because we do not sustain the rejection of claim 1, we also do not sustain the rejection of independent claims 11 and 21. Furthermore, because claims 3, 13, and 23 depend from claims 1, 11, and 21, respectively, we do not sustain the rejection of these claims.

## DECISION

We reverse the Examiner's decision to reject claims 1, 3, 11, 13, 21, and 23.<sup>3</sup>

## REVERSED

### Footnotes

- 1 The Appeal Brief identifies Rockwell Automation Technologies, Inc. as the real party in interest. App. Br. 1.
- 2 Our Decision refers to Appellants' Appeal Brief filed December 11, 2012 (“App. Br.”); Appellants' Reply Brief filed May 14, 2013 (“Reply Br.”); Examiner's Answer mailed March 14, 2013 (“Ans.”); and Final Office Action mailed April 6, 2012 (“Final Act.”).
- 3 Should there be further prosecution of this application, the Examiner may wish to review the claims for compliance under [35 U.S.C. § 101](#) in light of the Director's examination guidance on patent eligible subject matter. *See See July 2015 Update on Subject Matter*

*Eligibility*, 80 Fed. Reg. 45,429 (July 30, 2015); 2014 *Interim Guidance on Patent Subject Matter Eligibility*, 79 Fed. Reg. 74618 (Dec. 16, 2014), which supplements the “Preliminary Examination Instructions in view of the Supreme Court Decision in *Alice Corporation Pty. Ltd. v. CLS Bank International, et al.*,” Memorandum to the Examining Corps, June 25, 2014.  
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Patent and Trademark Office (P.T.O.)

EX PARTE RADOSLAV I. NIKOLOV AND BERND FOLLMERG

Appeal 2013-007196

[Application 10/836,847](#)

Technology Center 2400

August 27, 2015

\*1 Before MICHAEL J. STRAUSS, DANIEL J. GALLIGAN, and CHRISTA P. ZADO  
Administrative Patent Judges  
GALLIGAN  
Administrative Patent Judge

#### DECISION ON APPEAL

Appellants<sup>1</sup> seek our review under [35 U.S.C. § 134\(a\)](#) of the Examiner's Final Rejection of claims 1, 2, 4-7, 9-12, 14, 15, and 17-20. We have jurisdiction under [35 U.S.C. § 6\(b\)](#).

We AFFIRM.<sup>2</sup>

#### STATEMENT OF THE CASE

##### *Claims on Appeal*

Claims 1, 6, 11, 12, 15, 18, and 19 are independent claims.<sup>3</sup> Claim 1 is reproduced below:

1. A method for delivering messages of an enterprise messaging system, the method comprising:

using one or more processors, performing the operations of:

maintaining a plurality of message selectors, one for each subscriber of a plurality of subscribers subscribing to a topic queue for a topic, each message selector indicating interests of the associated subscriber to limit reception by the associated subscriber of messages whose headers and/or properties match the message selector, each message selector defining at least one attribute comprising a selection string including one or more conditional expression, the plurality of message selectors being maintained in a hierarchy structure in which each node of the hierarchy structure represents one of the plurality of message selectors, the hierarchy structure being based on common attributes of the message selectors;

determining, at a first server hosting messages in the topic queue for the topic, based on the message selector hierarchy structure, one or more groups of subscribers subscribing to the topic queue and having similar interests; and

for each of the messages, delivering the respective message once to a second server associated with one of the one or more groups of subscribers, the second server distributing the respective message to each of the subscribers of the respective group individually without invoking the first server.

*References*

Tso et al. US 6,047,327 Apr. 4, 2000  
(hereinafter “Tso”)

Cummins US 2004/0083269 A1 Apr. 29, 2004

*Examiner's Rejection*

Claims 1, 2, 4-7, 9-12, 14, 15, and 17-20 stand rejected under [35 U.S.C. § 103\(a\)](#) as being unpatentable over Tso and Cummins. Final Act. 3-12.

## ANALYSIS

\*2 We have reviewed the Examiner's rejections in light of Appellants' arguments the Examiner erred (Br. 11-17). We are not persuaded by Appellants' contentions. We adopt the findings of fact made by the Examiner in the Final Rejection and Examiner's Answer as our own (Final Act. 3-12; Ans. 3-6), and we concur with the conclusions reached by the Examiner. We highlight and address specific arguments and findings for emphasis as follows.

Appellants argue the Examiner erred in finding Tso teaches sending an InfoBite (“message”) once to network B (“second server”) because Tso teaches sending the InfoBite more than once. Br. 14. We are not persuaded by this argument because claim 1 does not prohibit sending the message more than once; rather, claim 1 requires sending the message “once,” which is taught when a message is sent one time, even if the message is subsequently sent additional times.

Appellants also argue Tso does not teach that network B “distributes the InfoBite to each of the subscribers of the respective group individually without invoking the InfoCast server.” Br. 14. We are not persuaded. In support of the rejection, the Examiner provided reasoning why Tso teaches or suggests that network B distributes the InfoBite “without invoking” the InfoCast server, explaining that “Network B21 (as illustrated in at least Figure 2) can be a cellular network (amongst other things). It has devices such as base stations that enable it to perform its own operations without needing to be triggered by an alternate device (such as a first server).” Advisory Action (August 1, 2012), 2. In contrast, Appellants have not directed us to persuasive evidence, such as disclosure in Tso suggesting that network B ever “invokes” the InfoCast server, that contradict the Examiner's findings. As such, we are not persuaded of Examiner error.

Appellants also argue claim 1 “requires that each message *from a topic queue* hosted by a server is delivered to a second server that is associated with one or more determined groups of subscribers.” Br. 15 (emphasis added). Appellants' argument relies on a construction that “each of the messages” means “each of the messages [in the topic queue].” Br. 15-16, 17. However, claim 1 does not specify that “each of the messages” refers to messages “in the topic queue.” We note that claim 1 includes three previous references to messages, including “messages of an enterprise messaging system,” “messages whose headers and/or properties match the message selector,” and “messages in the topic queue.” We are not persuaded that the recited “each of the messages” only refers to messages “in the topic queue,” and, therefore, Appellants' argument is unpersuasive because it is not commensurate with the scope of claim 1.

Furthermore, even under Appellants' interpretation of the claim language, we are not persuaded of Examiner error. In particular, Appellants argue that Tso teaches sending only those messages that have been identified as potentially being of interest to the user, rather than sending “each of the messages [in the topic queue].” Br. 15-17. The Examiner found, and we agree, that sending messages of interest to a user, as taught by Tso, is not patentably distinct from sending each message in the topic queue. Ans.

5-6. Indeed, Tso's teaching of sending messages that are of potential interest is consistent with Appellants' Specification, which discloses: "A message selector allows a client to specify, for example, by the message header, the messages it is interested in. Only messages whose headers and properties match the selector are delivered." Spec. ¶ 183 (51:3-7 (cited at Br. 4)). Appellants have not directed us to, and we have not found, a definition of "topic queue" in Appellants' Specification, that persuades us of Examiner error. Indeed, Appellants' Specification does not appear to use the term "topic queue" at all.

\*3 We sustain the rejection of claim 1, as well as claims 2, 4-7, 9-12, 14, 15, and 17-20, which are not argued separately.

#### DECISION

We affirm the Examiner's decision to reject claims 1, 2, 4-7, 9-12, 14, 15, and 17-20.

No time period for taking any subsequent action in connection with this appeal may be extended under [37 C.F.R. § 1.136\(a\)\(1\)\(iv\)](#).

#### AFFIRMED

#### Footnotes

- 1 The Appeal Brief identifies SAP AG as the real party in interest. Br. 2.
- 2 Our Decision refers to Appellants' Appeal Brief filed October 16, 2012 ("Br."); Examiner's Answer mailed February 14, 2013 ("Ans."); Final Office Action mailed February 15, 2012 ("Final Act."); and the original Specification filed April 30, 2004 ("Spec").
- 3 Should there be further prosecution of this application, the Examiner may wish to review the claims for compliance under [35 U.S.C. § 101](#) in light of the Director's examination guidance on patent eligible subject matter. See [2014 Interim Guidance on Patent Subject Matter Eligibility](#), 79 Fed. Reg. 74618 (Dec. 16, 2014) (and any updates thereof), which supplements the "Preliminary Examination Instructions in view of the Supreme Court Decision in [Alice Corporation Pty. Ltd. v. CLS Bank International, et al.](#)," Memorandum to the Examining Corps, June 25, 2014.

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