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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JAKE SEID¹

Appeal 2017-009988²
Application 13/841,634
Technology Center 3600

Before JAMES B. ARPIN, HUNG H. BUI, and MICHAEL J. ENGLE,
Administrative Patent Judges.

ARPIN, *Administrative Patent Judge.*

I. DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a), the Examiner’s decision rejecting claims 1–26, which constitute all of the claims pending in this application. Final Act. 2; App. Br. 3. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ According to Appellant, Ten-X, LLC is the real party-in-interest. App. Br. 32.

² In this Decision, we refer to Appellant’s Appeal Brief (“App. Br.,” filed March 6, 2017), Supplemental Appeal Brief (“Supp. App. Br.,” filed April 6, 2017), and Reply Brief (“Reply Br.,” filed July 18, 2017); the Final Office Action (“Final Act.,” mailed June 3, 2016); the Examiner’s Answer (“Ans.,” mailed May 18, 2017); and the originally filed Specification (“Spec.,” filed March 15, 2013).

II. STATEMENT OF THE CASE

The recited methods relate to the valuation of a property sold in online markets, and more specifically, to methods for determining valuation of a property using price elasticity information or an alternative probable valuation. Spec. ¶¶ 1, 14, 15; *see* Supp. App. Br. 2, 4, 6–7 (Claims App’x (Claims 1, 10, and 20)). In particular, the Specification explains that:

In another embodiment, a set of comparable transactions are determined for items that are comparable to a subject item receiving the valuation (e.g., comparable real property). *For each comparable transaction, one or more unsuccessful offers are identified, and an alternative probable valuation is determined for the corresponding item of that transaction based at least in part on the one or more unsuccessful offers.* The valuation for the particular item can be based at least in part on the determined alternative probable valuation of each comparable transaction.

In another embodiment, a candidate set of comparable transactions are identified. Each comparable transaction of the candidate set can be for a corresponding item that is deemed similar to the particular item. *For each comparable transaction of the candidate set, an elasticity is determined in the transaction price of that comparable transaction, based at least in part on a comparison between the transaction price and one or more unsuccessful offers of the comparable transaction.* The comparable transactions of the candidate set are identified in which the comparison between the transaction price and the unsuccessful bids exceeds an elasticity threshold. The valuation of the item is determined based at least in part on weighting down or eliminating the comparable transactions that exceed the elasticity threshold.

Spec. ¶¶ 14, 15 (emphases added).

As noted above, claims 1–26 are pending. Claims 1, 10, 20, and 22 are independent. Supp. App. Br. 2, 4, 6–8 (Claims App’x). Claims 2–9

depend directly or indirectly from claim 1, claims 11–19 depend directly from claim 10, claim 21 depends from claim 20, and claims 23–26 depend directly or indirectly from claim 22. *Id.* at 2–8.

Claim 1, reproduced below, is illustrative.

1. A method for determining a valuation of a subject item, the method being implemented by one or more processors and comprising:
 - analyzing a listing of a subject item to determine a set of characteristics for the subject item;
 - determining, based at least in part on data retrieved from a third party online source via a network connection, comparable criteria for the subject item based on the set of characteristics;
 - determining multiple comparable transactions conducted through an online marketplace, based at least in part on a search of a transaction log of the online marketplace using the comparable criteria; and
 - calculating the valuation for the subject item based on the multiple comparable transactions, wherein calculating the valuation includes providing an indicator of valuation elasticity based on a set of unsuccessful offers recorded in the transaction log of one or more of the comparable transactions.

Id. at 2.

III. REFERENCES

The Examiner relies upon the following prior art in rejecting the pending claims:

Name	Pat./Publ. No.	Issue/Publ. Date	Filing Date
Danzan ("Danzan")	US 2008/0235125 A1	Sep. 25, 2008	Mar. 19, 2007
Davis ("Davis")	US 8,108,264 B1	Jan. 31, 2012	Jun. 15, 2006
Lebaric <i>et al.</i> ("Lebaric")	US 2003/0229552 A1	Dec. 11, 2003	Jun. 5, 2002

IV. THE REJECTIONS

(1) Claims 1–26 are rejected under 35 U.S.C. § 101 because the claimed invention is directed to an abstract idea without significantly more. Ans. 2–3.

(2) Claims 1, 3–5, 7–10, 12, 14, and 17–26 stand rejected under 35 U.S.C. § 102(b) as anticipated by Danzan. *Id.* at 4–12.

(3) Claims 2 and 6 stand rejected under 35 U.S.C. § 103(a) as rendered obvious over the combined teachings of Danzan and Lebaric. *Id.* at 12–14.

(4) Claims 11 and 13 stand rejected under 35 U.S.C. § 103(a) as rendered obvious over the teachings of Danzan. *Id.* at 14–15.

(5) Claims 15 and 16 stand rejected under 35 U.S.C. § 103(a) as rendered obvious over the combined teachings of Danzan and Davis. *Id.* at 15–16.

V. DISCUSSION

Unless otherwise indicated, we adopt the Examiner's findings in the Answer as our own and add any additional findings of fact appearing below for emphasis. We address these rejections below.

A. Patent Ineligible Subject Matter

Under 35 U.S.C. § 101, a patent may be obtained for “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.” The U.S. Supreme Court has “long held that this provision contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2354 (2014) (quoting *Ass'n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)). The Court in *Alice* reiterated the two-step framework previously set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66, 75–79 (2012), “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice*, 134 S. Ct. at 2355. The first step in that analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts,” such as an abstract idea. *Id.*

The Court acknowledged in *Mayo* “all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.” *Mayo*, 566 U.S. at 71. We, therefore, look to whether the claims focus on a specific method or means that improves the relevant technology or are directed instead to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery.

See Enfish, LLC v. Microsoft Corp., 822 F.3d 1327, 1335–36 (Fed. Cir. 2016). If the claims are not directed to an abstract idea, the inquiry ends. *Id.* at 1339. Otherwise, the inquiry proceeds to the second step where the elements of the claims are considered “individually and ‘as an ordered combination’ to determine whether the additional elements ‘transform the nature of the claim’ into a patent-eligible application.” *Alice*, 134 S. Ct. at 2355 (quoting *Mayo*, 566 U.S. at 78, 79). In other words, the second step is to “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.* (quoting *Mayo*, 566 U.S. at 72–73 (emphasis added)). .

1. *Statutory Categories*

Initially, we conclude that each of the pending claims is directed to a method. Supp. App. Br. 2–8. Thus, each of the pending claims is directed to a statutory category of invention, *i.e.*, a “process.” 35 U.S.C. § 101; *see* 35 U.S.C. § 100(b) (“The term ‘process’ means process, art, *or method*, and includes a new use of a known process, machine, manufacture, composition of matter, or material.” (emphasis added)); 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50, 54 (Jan. 7, 2019); MPEP §§ 2106(I), 2106.03.³

2. *Alice Step One*

With regard to the first step of the *Alice* analysis, the Examiner determines that “[c]laims 1–26 are directed to the series of steps directed to

³ All MPEP citations herein are to MPEP Rev. 08.2017, January 2018.

instructing how to value a subject item, which is a fundamental economic practice, and hence, an abstract idea” (Final Act. 2–3), i.e., “certain methods of organizing human activity’, describing concepts relating to interpersonal and intrapersonal activities such as managing relationships or transactions between people, social activities, and human behavior, satisfying or avoiding a legal obligation, advertising, marketing, and sales activities, and managing human mental activity” (Ans. 18). *See* Ans. 2, 17; *see also* 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. at 51 (identifying “[c]ertain methods of organizing human activity” as a category of abstract ideas). Accepting claim 1 as illustrative, the Examiner considers each of the limitations of claim 1 in justifying the identification of the abstract idea. Final Act. 3; *see* Ans. 2–3, 17–18. Further, the Examiner determines that, although the claims recite the use of processors and computer networks, the recited methods can be performed without the aid of such devices, for example, using pen and paper. Final Act. 3 (“The method can be performed with or without the assistance of a computer”); Ans. 22 (“The claim does recite retrieving data from the Internet; however, the data could just as easily be retrieved utilizing other means, such as the postal service and pre-computer paper files.”). In addition, the Examiner determines that the identified abstract idea is similar to other abstract ideas previously identified by the courts. Final Act. 3; Ans. 3, 18. In particular, the Examiner determines:

The method is similar to “certain methods of organizing human activity”, describing concepts relating to interpersonal and intrapersonal activities such as managing relationships or transactions between people, social activities, and human behavior, satisfying or avoiding a legal obligation, advertising, marketing, and sales activities, and managing human mental

activity. For example, in *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S.Ct. 2347, 2360 (2014) (performing repetitive calculations) and *Bancorp Services v. Sun Life*, 687 F.3d 1266, 1278 (Fed. Cir. 2012) (receiving, processing, and storing data), the claims were held to be directed to abstract ideas. The present claims are directed to using comparable criteria and performing repetitive calculations using transaction logs to calculate valuations. That is similar to the abstract idea in *Alice*. Moreover, the steps of receiving, processing, and storing data in the present claims are similar to *Bancorp Services*.

Valuing a subject item is also a fundamental economic practice fundamental to the economy similar to other practices that have been found to be directed to abstract ideas, such as mitigating settlement risk, *Alice Corporation Pty. Ltd. v. CLS Bank International, et al.*, 573 U.S. ___ (2014), and hedging, *Bilski v. Kappos*, 561 U.S. 593 (2010). Therefore, the claims are directed to an abstract idea (Step 2A: YES).

Ans. 18. Thus, the Examiner determines that the pending claims are directed to an abstract idea.

3. *Alice Step Two*

With regard to the second step of the *Alice* analysis, the Examiner determines that the claims recite only generic hardware and software elements, namely, “processors,” a “third party online source,” an “online marketplace,” and “network connections.” Final Act. 3–4; Ans. 3; Spec. ¶ 57 (“Thus, embodiments described are not limited to any specific combination of hardware circuitry and software.”); *see* Ans. 18–19. The Examiner further determines:

Ultimately, the claimed machine(s) function solely as an obvious mechanism to achieve the claimed result, failing to impart a meaningful limit on the claim scope (*see SiRF Tech., Inc. v. ITC*, 601 F.3d 1319 (Fed. Cir. 2010)). The claims at issue here do not rise to overriding the routine and conventional

sequence of events ordinarily performed by the computer, nor do they set forth with any specificity the interactions of the machine itself. Conversely, the claims are only specific in how the computer is used to facilitate the abstract idea itself using routine and conventional operations of the generic machinery, and are silent as to any detail or property that would transform the otherwise generic machinery into a specialized or special purpose machine.

Ans. 19–20.

After considering the limitations of the pending claims, the Examiner determines that “[e]ach of these elements separately and in combination does not amount to significantly more than the judicial exception because they would be utilized in a conventional computer implementation of the abstract idea. The processors provide computing functions. The network connection and online capabilities provide communication functions.” Final Act. 4; Ans. 3.

4. Appellant’s Eligibility Contentions

Appellant contends that the pending claims are not directed to an abstract idea and, even if found to be so directed, when the recited limitations are considered as an ordered combination, the recited methods amount to significantly more than an abstract idea. App. Br. 8–13; Reply Br. 3–5. For the reasons set forth below, we disagree.

Appellant contends that the pending claims are not directed to an abstract idea for at least three reasons. App. Br. 8–11. Appellant focuses its contentions on the recitations of independent claim 1, but we agree that those contentions are similarly applicable to the other pending claims. *See id.* at 12–13.

First, Appellant contends that the Examiner overgeneralizes the focus of the recited methods in determining them directed to an abstract idea. *Id.* at 8. In particular, Appellant argues that the Examiner makes the determination “untethered from the claim language and ignores the requirements of the individual limitations/steps of the claims fails to consider the individual steps.” *Id.* (citing *McRO, Inc. v. Bandai Namco Games Am., Inc.*, 837 F.3d 1299, 1313 (Fed. Cir. 2016); *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1337 (Fed. Cir. 2016)); *see* Reply Br. 3–4.

However, Appellant’s arguments are not persuasive because the Examiner clearly considered the individual limitations of the pending claims in determining that the recited methods are directed to an abstract idea. Final Act. 2–3; Ans. 2–3, 17–18, 21. In particular, we agree with the Examiner that the abstract idea (“the series of steps instructing how to value a subject item”) utilizes the following claim limitations: (1) “analyzing a listing of a subject item to determine a set of characteristics for the subject item”; (2) “determining, based at least in part on data retrieved from a third party . . . source via a . . . comparable criteria for the subject item based on the set of characteristics”; (3) “determining multiple comparable transactions conducted through an . . . marketplace, based at least in part on a search of a transaction log of the . . . marketplace using the comparable criteria”; and (4) “calculating the valuation for the subject item based on the multiple comparable transactions, wherein calculating the valuation includes providing an indicator of valuation elasticity based on a set of unsuccessful offers recorded in the transaction log of one or more of the comparable transactions.” Ans. 17–18. We further agree with the Examiner that the claimed series of steps instructing how to value a subject item, including

based on unsuccessful offers for comparable transactions, is “a fundamental economic practice,” similar to *Alice*, 573 U.S. at 219–20, and *Bilski*, 561 U.S. at 611–12. Ans. 18. Moreover, the level of abstraction at which the Examiner describes the methods does not change the accuracy of the Examiner’s determination. *Apple Inc. v. Ameranth Inc.*, 842 F.3d 1229, 1240 (Fed. Cir. 2016) (“An abstract idea can generally be described at different levels of abstraction.”). Thus, the Examiner’s determination that the pending claims are directed to an abstract idea adequately takes into account the requirements of the claim limitations.

Second, Appellant contends that the recited methods are directed to improvements in computer functionality rather than directed to an abstract idea. App. Br. 8–9. In particular, Appellant contends “[t]he claims do not merely recite the practice of valuating an item, and stating ‘performed with a computer’, but instead recite meaningful steps that are specific to online transactions.” *Id.* at 11. Appellant, however, does not identify a problem with computer functionality or on-line transactions solved by the recited methods. Spec. ¶¶ 1, 9–19; *cf. Trading Techs. Int’l, Inc. v. CQG, Inc.*, 675 F. App’x 1001, 1004 (Fed. Cir. 2017) (“The [district] court held that, rather than reciting ‘a mathematical algorithm,’ ‘a fundamental economic or longstanding commercial practice,’ or ‘a challenge in business,’ the challenged patents ‘solve problems of prior graphical user interface devices . . . in the context of computerized trading[] relating to speed, accuracy and usability.’”). Here, the Examiner determined that

the claims [of the present application] were directed to an abstract idea similar to performing repetitive calculations and receiving, processing, and storing data and that the technological elements were generic elements utilized in a routine and

conventional manner. The examiner submits that this is a finding that there was no improvement in computer functionality and that the claims were directed to an abstract idea.

Ans. 21. We agree.

Similarly, Appellant contends that, like the claims in *McRO*, “[t]he programmatic determination and use of ‘a set of characteristics,’ ‘comparable criteria,’ and ‘comparable transactions’ is similar to the use of ‘rules’ in [*McRO*]. Indeed, their determination and use is what improves the relevant technology and not the mere use of generic computer technology.” App. Br. 10. Yet, unlike *McRO*, Appellant fails to show where the pending claims, as properly construed, are directed to specific rules that improve the relevant *technology*. *McRO*, 837 F.3d at 1314. The programmatic determinations of identifying a set of characteristics, determining comparable criteria, and determining comparable transactions are not shown to be in any way specific to technology. *See* App. Br. 10; Ans. 21–22.

Third, Appellant argues that the recited methods are not directed to an abstract idea because the pending claims do not preempt every application of the abstract idea. App. Br. 9–10. However, this argument is not persuasive because, although “preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015). “Where a patent’s claims are deemed only to disclose patent ineligible subject matter” under the *Alice/Mayo* framework, “preemption concerns are fully addressed and made moot.” *Id.*

Here, the pending claims recite an abstract idea, i.e., “[a] method for determining the valuation of a subject item,” rather than the practical application of the abstract idea. *See* Supp. App. Br. 2 (claim 1), 4 (claim

10), 6–7 (claim 20), 7–8 (claim 22). Considering the additional, recited limitations, individually and as a whole, we determine that no limitation or limitations applies or uses the judicial exception in some other meaningful way beyond generally linking the use of the judicial exception to a particular technological environment, e.g., one or more processors linked to a third party on-line source via a computer network, an on-line marketplace for subject items, or the Internet, such that the claims as a whole are more than a drafting effort designed to monopolize the exception. *See* Ans. 22 (“The claim does recite retrieving data from the Internet; however, the data could just as easily be retrieved utilizing other means, such as the postal service and pre-computer paper files.”); 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. at 54–55 (“Prong Two”). We conclude the pending claims do not integrate the judicial exception into a practical application. For example, as discussed above, the claims do not improve the functioning of a computer or other technology, are not applied with any particular machine, and do not effect a transformation of a particular article to a different state. *See* MPEP §§ 2106.05(a)–(c), (e)–(h). Thus, we are not persuaded that the Examiner improperly determined that the pending claim are directed to an abstract idea.

Applicant further contends that, even if the pending claims are directed to an abstract idea, the limitations of the pending claims amount to significantly more than an abstract idea because the Examiner fails to consider the limitations of the pending claims as an ordered combination. App. Br. 11–13.

Undertaking the appropriate analysis, the Board should find that the claims do amount to “significantly more” than the alleged abstract idea. Taken individually and in combination, the

claim limitations are unconventional and non-generic, and embody patent-eligible inventive concepts. For instance, claim 1 requires the use of an “indicator of valuation elasticity based on a set of unsuccessful offers recorded in the transaction log of one or more of the comparable transactions.” Similarly, independent claim 20 requires “determining an elasticity in a transaction price of that comparable transaction based at least in part on a difference between the transaction price and one or more unsuccessful offers.” Such a concept is neither generic nor conventional. For instance, the specification explains that “conventional approaches generally do not account for” “elasticity factors, such as randomness, or factors that are inherent and specific to a particular item.” [Spec. ¶ 11.] And in particular, “examples described here identify and utilize unsuccessful offers (e.g., losing bids in an auction) as a mechanism to determine valuation for an item in a manner that accounts for the presence of elasticity factors.” *Id.* Accordingly, limitations of the claims represent non-generic and non-conventional steps in resolving the issues faced by the inventors. The Examiner has not shown that these limitations, either individually or in combination, are merely generic and conventional.

App. Br. 12–13; *see* Spec. ¶¶ 11, 14, 15. Appellant does not contend that “price elasticity” or “alternative probable valuation” was an unknown concept or that their determination based on unsuccessful bids was not conventional or routine. *See* Spec. ¶ 15; *see also* Organization for Economic Co-operation and Development, Glossary of Statistical Terms, <https://stats.oecd.org/glossary/detail.asp?ID=3206> (“Elasticity of Demand, Price”) (Mar. 4, 2003) (“The price elasticity in demand is defined as the percentage change in quantity demanded divided by the percentage change in price.”).

Nevertheless, Appellant contends that the use of this known concept in determining the valuation of a subject item is not generic or conventional.

App. Br. 12–13. For example, Appellant contends that “conventional approaches” do not account for “elasticity factors, such as randomness, or factors that are inherent and specific to a particular item.” *Id.* These “factors,” however, are not recited in independent claims 1 or 20, and independent claims 10 and 22 do not recite determining price “elasticity.” *See* Supp. App. Br. 2 (claim 1), 4 (claim 10), 6–7 (claim 20), 7–8 (claim 22). Moreover, as the Federal Circuit explained, “[i]t has been clear since *Alice* that a claimed invention’s use of the ineligible concept to which it is directed cannot supply the inventive concept that renders the invention ‘significantly more’ than that ineligible concept.” *BSG Tech LLC v. BuySeasons, Inc.*, 899 F.3d 1281, 1290 (Fed. Cir. 2018). Thus, we are not persuaded that the Examiner erred in determining that the recited limitations, *individually or as an ordered combination*, do not amount to significantly more than the identified abstract idea. Final Act. 4; Ans. 3.

The Examiner determined that independent claims 10, 20, and 22 contain limitations similar to those of claim 1 and are similarly ineligible. Ans. 20. Further, the Examiner determined that dependent claims 2–9, 11–19, 21, and 23–26 suffer from the same deficiencies as their base claims. *Id.*

For the reasons above, the Examiner did not err in determining the recited methods are patent ineligible, and we sustain the Examiner’s rejections under 35 U.S.C. § 101.

B. Lack of Anticipation by Danzan

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co.*, 814 F.2d 628, 631 (Fed. Cir. 1987). The elements must be arranged as required by the claim, but this

is not an *ipsissimis verbis* test. See *In re Bond*, 910 F.2d 831, 832 (Fed. Cir. 1990). “[U]nless a reference discloses within the four corners of the document not only all of the limitations claimed *but also all of the limitations arranged or combined in the same way as recited in the claim*, it cannot be said to prove prior invention of the thing claimed, and thus, cannot anticipate under 35 U.S.C. § 102.” *Net MoneyIN, Inc. v. VeriSign, Inc.*, 545 F.3d 1359, 1371 (Fed. Cir. 2008) (emphasis added); accord *In re Arkley*, 455 F.2d 586 (CCPA 1972).

The Examiner finds Danzan discloses each and every element of claims 1, 3–5, 7–10, 12, 14, and 17–26. Final Act. 4–12. For the reasons set forth below, we determine that the Examiner’s mapping of the elements of the pending claims on the disclosure of Danzan is deficient.

1. “analyzing” and “determining . . . comparable criteria” steps

Initially, claim 1 recites

analyzing a listing of a subject item to determine a set of characteristics for the subject item;

determining, based at least in part on data retrieved from a third party online source via a network connection, comparable criteria for the subject item based on the set of characteristics.

Supp. App. Br. 2. Independent claims 10, 20, and 22 recite similar limitations. *Id.* at 4 (claim 10), 6 (claim 20), 7 (claim 22). The Examiner finds that Danzan discloses the “analyzing” step because Danzan discloses that the “buyer analyzes parameters of properties buyer is bidding on.” Final Act. 4 (citing Danzan ¶ 20). Specifically, referring to Figure 4, Danzan discloses:

Buyers will then conduct a search 401 for properties that are of interest. Search parameters would typically include a set of

property descriptors appropriate for the particular market. Exemplary descriptors that may be searched include property type, price, and geography (for real estate properties). Once a property or set of properties is selected, the buyer then defines a set of parameters 402 under which they would like to make offers on the properties.

Danzan ¶ 20. The Examiner maps the recitation of “a listing of a subject item” on Danzan’s disclosure of “exemplary descriptors.” Ans. 25 (“Danzan, [¶ 20] discloses a listing comprising the identity of a property and various descriptors, such as type, price, and geography.”). Thus, Danzan’s “descriptors” are used as search terms to identify subject properties. Reply Br. 6; *see* App. Br. 14.

The Examiner further finds that Danzan discloses:

Once a property or set of properties is selected, the buyer then defines a set of parameters 402 under which they would like to make offers on the properties. Non-limiting exemplary parameters may include starting bid, maximum bid, bid increments if automatic bidding is enabled, whether response bids should in fact be automatic or manual, etc. *Each selected property may have a unique set of bidding parameters.*

Danzan ¶ 20 (emphasis added). The Examiner maps the recitation of “a set of characteristics” on Danzan’s disclosure of “exemplary parameters.” Ans. 26 (“Danzan for example discloses relating bid prices, interest rates, times, etc. Danzan, [¶ 20]. *This is an example of a set of characteristics.*” (emphasis added)); *see id.* at 27.

The Examiner alleges “that Danzan teaches that “[b]uyers search and analyze listings **based on** various database parameters.” Reply Br. 7 (quoting Ans. 25). However, as Appellant notes, the claims do not recite analyzing a listing *based on* the set of characteristics. *Id.* Instead, the claims recite “analyzing a listing of a subject item *to determine* a set of

characteristics for the subject item.” *Id.*; *see* Supp. App. Br. 2. Thus, the Examiner’s mapping of the recited limitations on Danzan’s disclosure is flawed.

With respect to the step of “determining . . . comparable criteria for the subject item based on the set of characteristics” (Supp. App. Br. 2), the Examiner further finds that Danzan discloses that a “buyer defines bidding parameters for multiple properties, which are comparable properties in that such properties are the common results of a single search” (Final Act. 5 (citing Danzan ¶ 20)). In particular, the Examiner finds “[t]he transactions are comparable because Danzan, [¶ 20] discloses that the buyer selects a set of search descriptors. The chosen search descriptors will necessarily generate transaction data comparable to the desired data.” Ans. 27–28. However, the Examiner’s reasoning is again flawed.

Similar search parameters should retrieve comparable subject items. The Examiner finds that the “*criteria*,” i.e., the “bidding parameters,” are *comparable* because the *properties*, i.e., subject items, resulting from the same search are *comparable*. However, the independent claims recite that the “comparable criteria” are “based on the set of characteristics,” i.e., Danzan’s “bidding parameters,” which may be “unique” to “each selected property.” Danzan ¶ 20. Thus, the Examiner fails to show that the “comparable criteria are based on the set of characteristics.”

Because each of independent claims 1, 10, 20, and 22 recites these “analyzing” and “determining” steps, Danzan fails to anticipate each of these claims, as well as the rejected claims depending therefrom.

2. “*determining multiple comparable transactions . . . using the comparable criteria*” step

In addition, claim 1 recites

determining multiple comparable transactions conducted through an online marketplace, based at least in part on a search of a transaction log of the online marketplace using the comparable criteria.

Supp. App. Br. 2. The Examiner finds that Danzan discloses “transaction log data is used to determine comparable transactions.” Final Act. 5 (citing Danzan ¶ 20). In particular, the Examiner explains, “Appellant argues that Danzan does not disclose ‘based on the set of characteristics’. [App. Br.] 16. Danzan for example discloses relating bid prices, interest rates, times, etc. Danzan[¶ 20]. This is an example of a set of characteristics.” Ans. 27.

Danzan further discloses that:

An unacceptable bid will be signaled back to the buyer 407. The buyer then makes a decision 408 to either continue bidding by setting new, auction parameters 402 or to stop bidding on a particular or all properties. An acceptable bid then continues the process and bids *for all properties from all buyers* are completed 404. Conduct bids in the case of the instant invention includes as exemplary steps: to log all bids, bid history and bid parameters in a database, *compare and rank bids as to highest bid, relate bids in the buying and selling database to buying parameters and to selling parameters, relate bids in the buying and selling system database to the current market data such as date and time, relate bids in the buying and selling database to external factors such as interest rates.*

Danzan ¶ 20 (emphases added). As Appellant contends, Danzan discloses *comparing* bids for a single transaction and *relating* those bids to the bidding parameters. App. Br. 16–17; *see* Spec. ¶ 9 (“In many examples described herein, price elasticity information can be determined in part *from unsuccessful offers received in the course of prior transactions for*

comparable items (or comparable transactions).” (emphasis added)).

Further, as noted above, the Examiner finds that Danzan’s “bidding parameters” disclose the recited “comparable criteria.” Final Act. 4–5; *see* App. Br. 17. However, the Examiner fails to show where Danzan discloses searching a transaction log using these “bidding parameters” *to determine* “comparable transactions.” App. Br. 17; Reply Br. 9–10; *see* Ans. 27–28. Thus, we agree with Appellant that the Examiner fails to show that Danzan discloses this element of claim 1.

Because each of independent claims 1, 10, 20, and 22, recites this or a substantially similar step, the Examiner fails to show Danzan anticipates each of these claims, as well as the rejected claims depending therefrom.

3. “*calculating the valuation*” step

Claim 1 also recites

calculating the valuation for the subject item *based on the multiple comparable transactions*, wherein calculating the valuation includes *providing an indicator of valuation elasticity* based on a set of unsuccessful offers recorded in the transaction log of one or more of the comparable transactions.

Supp. App. Br. 2 (emphases added). The Examiner finds that Danzan discloses, “transaction log data is used to determine elasticity.” Final Act. 5 (citing Danzan ¶ 20). In particular, the Examiner asserts that

price elasticity is a well[-]known and extremely broad concept. Simply reciting an indication of price elasticity denotes that the claim requires some indication of whether one product will be substituted for another. In the case of real estate, it means whether one property will be substituted for another. Danzan, [¶ 20] discloses searching, ranking, and bidding on multiple properties simultaneously and reordering the ranking substituting one preferred property for another based on the

progress of the auctions. *Therefore, Danzan discloses the concept of price elasticity.*

Ans. 28 (emphases added); *see* Final Act. 17 (“Applicant argues that Danzan does not disclose taking into account price elasticity into account after unsuccessful offers of previous comparable transactions. The examiner believes that Danzan does so, at least as the concept is currently claimed.” (citation omitted)).

Appellant contends that the Examiner fails to show “where and how Danzan discloses ‘price elasticity.’” App. Br. 18; *see* Reply Br. 10. The Examiner does not show where Danzan uses the term “elasticity.” *See* App. Br. 28. Moreover, it is unclear from the Examiner’s rejection whether the Examiner is taking official notice that “price elasticity” is a well-known concept or whether the Examiner is finding that disclosure of “price elasticity” is inherent in Danzan’s discussion of “unacceptable,” i.e., unsuccessful, bids. *See* Ans. 28; Danzan ¶ 20 (“An unacceptable bid will be signaled back to the buyer 407.”); *see also* Spec. ¶ 9 (“[P]rice elasticity information can be determined in part from *unsuccessful offers received in the course of prior transactions for comparable items (or comparable transactions)*.” (emphasis added)). If the former, the Examiner fails properly to take official notice, and, in the present case, such official notice would not be sufficient to support an *anticipation* rejection based on Danzan. *See* MPEP § 2144.03. If the latter, the Examiner fails to show that the disclosure of “price elasticity” is inherent in Danzan. *See id.* § 2112 (“The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic.”).

Further, claim 1 recites that “calculating the valuation includes providing *an indicator* of valuation elasticity.”⁴ Supp. App. Br. 2 (emphasis added); *see id.* at 5 (claim 14 reciting “an elasticity range”), 8 (claims 23–26 reciting “an elasticity parameter”); *see also id.* at 6 (claim 20 reciting “elasticity of the transaction price exceeding a threshold”), 7 (claim 21 reciting that “the elasticity of the transaction price” is less than or greater than “the designated threshold”). As Appellant correctly contends, the Examiner fails to show where Danzan discloses “an *indicator* of valuation elasticity.” App. Br. 18; Reply Br. 10; *see* Final Act. 5; Ans. 28–29. Further, in view of the Examiner’s failure to show that Danzan discloses determining price elasticity, we are not persuaded that the Examiner shows that Danzan discloses the “elasticity range” of claim 14 (Final Act. 8), the “elasticity parameter” of claims 23–26 (*id.* at 11–12), or the relationship of transaction price elasticity to a threshold as recited in claims 20 and 21 (*id.* at 9–10).

Because each of independent claims 1 and 20 recites this or a substantially similar step, the Examiner fails to show Danzan anticipates

⁴ Unlike claim 1, claim 10 recites, “determining *an alternative probable valuation* for the corresponding item of that transaction based at least in part on the one or more unsuccessful offers.” Supp. App. Br. 4. The Examiner does not show where Danzan discloses “an alternative probable valuation,” but, instead, simply relies on Danzan’s discussion of the consideration of unacceptable bids to disclose this limitation. Final Act. 9. We agree with Appellant that this discussion is insufficient to support an anticipation rejection of claim 10. App. Br. 18–19.

each of these claims or claims 14 or 23–26,⁵ as well as the rejected claims depending therefrom.

For these reasons, we are persuaded that the Examiner erred in finding the recited methods anticipated by Danzan. Accordingly, we do not sustain the Examiner’s rejection of claims 1, 3–5, 7–10, 12, 14, and 17–26 under 35 U.S.C. § 102(b).

C. Lack of Obviousness Over Danzan, alone or in combination with Davis or Lebaric

Claims 2 and 6 stand rejected as rendered obvious over the combined teachings of Danzan and Lebaric, claims 11 and 13 stand rejected as rendered obvious over the teachings of Danzan, and claims 15 and 16 stand rejected as rendered obvious over the combined teachings of Danzan and Davis. *Id.* at 12–16. Each of these rejections relies on the finding of anticipation by Danzan with respect to the base claims, claims 1 and 10. Supp. App. Br. 2, 3, 4, and 5. For the reasons set forth above, we do not sustain the Examiner’s rejections of claims 1 and 10 as anticipated by Danzan. *See supra* Section V.B. Thus, we also are persuaded that the

⁵ Unlike claims 1, 10, and 20, claim 22 recites neither “elasticity” nor “an alternative probable valuation,” but, instead, more broadly recites “determining the valuation of the subject item based at least in part on the one or more unsuccessful offers for each of the one or more comparable items.” Supp. App. Br. 8. Because we are not persuaded that the Examiner shows that Danzan discloses determining the price of one property based on unacceptable bids *on other properties* (Final Act. 11), the Examiner fails to show that Danzan anticipates claim 22 for this additional reason. *See* Danzan ¶ 20 (“Exemplary feedback includes rejecting the bid, ignoring the bid or contacting the buyer to further consummate a deal. The buyer may then continue by deciding **408** to alter the bidding parameters **402** or select additional properties (**409** then **401**) or to end the process **410**.”).

Examiner erred in determining the claims 2, 6, 11, 13, 15, and 16 rendered obvious over the teachings of Danzan, alone or in combination with those of Davis or Lebaric. Accordingly, we do not sustain the Examiner's rejection of claims 2, 6, 11, 13, 15, and 16 under 35 U.S.C. § 103(a). *See* App. Br. 19; Ans. 30.

VI. DECISION

For the above reasons, we affirm the Examiner's decision rejecting claims 1–26 under 35 U.S.C. § 101. However, we reverse the Examiner's rejections of (1) claims 1, 3–5, 7–10, 12, 14, and 17–26 under 35 U.S.C. § 102 and (2) claims 2, 6, 11, 13, 15, and 16 under 35 U.S.C. § 103.

Because we have affirmed at least one ground of rejection with respect to each claim on appeal, the Examiner's decision is affirmed. *See* 37 C.F.R. § 41.50(a)(1).

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

AFFIRMED