UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

INFORMAL BRIEF OF APPELLANT

Case Number: 22-1274

Short Case Caption: In re Janke

Name of Appellant: Garth Janke

Instructions: Read the Guide for Unrepresented Parties before completing this form. Answer the questions as best as you can. Attach additional pages as needed to answer the questions. This form and continuation pages may not exceed 30 pages.

Attach a copy of the agency's opinion and/or order. You may also attach other record material as an appendix. Any attached material should be referenced in answer to the below questions. Please redact (erase, cover, or otherwise make unreadable) social security numbers or comparable private personal identifiers that appear in any attachments you submit.

1. Have you ever had another case in this court? ☑ Yes ☐ No
   If yes, state the name and number of each case.

   04-1267 In re Fulton
   17-1697 In re Janke

2. Did the agency incorrectly decide or fail to take into account any facts?
   ☐ Yes ☑ No
   If yes, what facts?

3. Did the agency apply the wrong law? ☑ Yes ☐ No
   If yes, what are your arguments concerning those issues?

See the accompanying pages.

4. Did the agency fail to consider important grounds for relief? ☐ Yes ☑ No
   If yes, on what grounds?

5. Are there other reasons why the decision was wrong? ☐ Yes ☑ No
   If yes, what reasons?

6. What action do you want this court to take in this case?

See the accompanying Page 17.

Date: 02/15/2022

Signature: /s/ Garth Janke

Name: Garth Janke

I. INTRODUCTION

Appellant agrees with the Patent Office that the Claims 21 - 35 on appeal fall within the judicial exceptions to the 35 U.S.C. § 101 statutory allowances for patent-eligibility arising from *Gottschalk v. Benson*[1] and *Parker v. Flook*.[2] But Appellant disagrees that they are not patent-eligible.

The invention is a leaf rake head. There are three representative claims to it that will suffice for purposes of discussion.

Claim 1 (representative of Claims 1 - 5) is to the product itself. It is important to note that the Patent Office agrees the product is patentable.

Claim 26 (representative of rejected Claims 26 - 30) is to a process for making the product, and is analogous to the claim in *Flook*.

Claim 21 (representative of rejected Claims 21 - 25 and 31 - 35) is to a process for making a computerized model of the product, which is used as input to the process of Claim 26, and is analogous to the claim in *Benson*.

Claim 26 is especially illustrative. It is based on a thought experiment that occurred to Appellant from news reports around the time *Alice v. CLS Bank* was decided, that people were making plastic guns with 3D printers.

Basically, a 3D printer uses a mathematical description of a product to make a real embodiment of the product. Aside from the formula, the 3D printing processes were conventional and generic.

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[1] Gottschalk v. Benson, 409 U.S. 63 (1972).

[2] Parker v. Flook, 437 U.S. 584 (1978).

This is the thought experiment: suppose there were two different guns and one of them was patentable.

The only difference between making a patentable gun with a 3D printer, and making an unpatentable gun with a 3D printer, is a different mathematical formula. But according to the judicial exception from *Flook*, all mathematical formulas must be treated alike, as if they were prior art,[3] to ensure that nothing can be patented that is not "significantly more" than an "abstract idea." Which means that this hypothetical patentable gun would lose all its patentability if it were claimed to be made with a 3D printer.

Claim 26 is a real version of this thought experiment; a real claim to making a product–here the product of Claim 1–with a 3D printer. And the result was the same. The Patent Office agreed that the process of Claim 26 cannot be patented because it is not significantly more than a mathematical formula. But the Patent Office also agreed that the product is patentable.

So now there is an official decision that a patentable product *loses its patentability when it is claimed to be made with a 3D printer.*

It makes no sense, but it follows directly from the judicial exception from *Flook*, so Appellant submits it as proof that the "significantly more" requirement imposed by this judicial exception does not work, at least not for Claim 26.

With that, Appellant could stop right here in regard to Claim 26, but will have a little more to say about it further below.

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[3] Id. at 594-595 ("Respondent's application simply provides a new and presumably better method for calculating alarm limit values. If we assume that that method was also known, as we must under the reasoning in Morse . . . .").

Appellant also intends to show that the judicial exception from *Benson* does not make sense for Claim 21 either; and that the question of the patent-eligibility of all the claims belongs to the statute.

II. REPRESENTATIVE CLAIMS

1. A leaf rake head product for enabling a clog-resistant feature in a hand-held leaf rake, the leaf rake head product comprising a plurality of independent raking tines extending from a common body portion, wherein each raking tine has an entire length over which the raking tine is an elongate member first extending substantially linearly, thence turning through a distinct bent portion, and thence again extending substantially linearly to define an elongate raking portion of the raking tine terminating in a raking tip, the bent portion extending over less than 20% of said length, the product further comprising, in each of the plurality of raking tines, at least one hole extending through and enclosed by the respective raking portion.[4]

[4] The holes through the raking tines are the only thing about the product of Claim 1 that is new. See the application Specification (all references to the application are to the application as originally filed) at Page 4, line 21 through Page 5, line 4. All the other details recited in the claim are merely for the purpose of defining the geometry of the raking tines of an ordinary leaf rake head, thereby limiting the scope of the claim to this particular kind of rake.

The holes are for "enabling" a clog resistant feature, which is first implemented in Claim 3. This clog resistant feature is a "line," such as string trimmer line, threaded through the holes.

21. A process for enabling a clog-resistant feature in a hand-held leaf rake, comprising installing a first mathematical model on a computer, the first mathematical model describing first mathematical equations that define . . . [the product of Claim 1].

26. The process of claim 21, further comprising applying the first mathematical model on a commercially available 3D printer to result in transforming the first mathematical model into a real leaf rake head product as defined . . . [in product Claim 1].[5]

III. QUESTION PRESENTED

Starting with the mathematical model itself, i.e., the "first" mathematical model of the leaf rake head product recited in Claim 21, then considering the additional limitation in Claim 21 of installing the model on a computer, then considering the additional limitation in Claim 26 of applying the model on a 3D printer to result in making the product, and finally considering Claim 1 to the product itself, when does the claimed subject matter become patent-eligible and why?

[5] Claim 31 is representative of Claims 31 - 35. It is not being discussed because it is considered to differ inconsequentially from Claim 21 for purposes herein.

IV. APPLYING BENSON AND FLOOK

A. The Mathematical Model Itself

The mathematical model recited in Claim 21 is claimed to describe mathematical equations or formulas that define the same leaf rake head product that is defined in Claim 1. It is not claimed to be anything more than pure math.

The Court in *Benson* observed that math fits the definition of a "principle" as set forth in *Le Roy v. Tatham*."[6] *Tatham* said that principles cannot be patented because, without being practically applied, they do not produce "new and useful" results.[7]

Section 101 says that any new and useful process may be patented.[8] But the process must be new and useful, and *Benson* was right that an algorithm all by itself is not a "process" within the meaning of the Patent Act.[9]

All this is beyond dispute. The mathematical model all by itself is unquestionably what is now generically termed a "patent-ineligible concept."

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[6] See 409 U.S. 63, 67 (1972).

[7] Le Roy v. Tatham, 55 U.S. 156, 160 (1852) ("[T]he discovery of a new principle is not patentable, but it must be embodied and brought into operation by machinery so as to produce a new and useful result").

[8] 35 U.S.C. § 101 ("Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title").

[9] 409 U.S. at 63 ("merely a series of mathematical calculations or mental steps, and does not constitute a patentable 'process' within the meaning of the Patent Act."). More precisely, it is not "useful." See note 7, supra.

B. Claim 21: Installing the Mathematical Model on a Computer (Benson)

From *Benson*:

> "It is conceded that one may not patent an idea. But, in practical effect, that would be the result if the formula . . . were patented in this case. The mathematical formula involved here has no substantial practical application except [the one claimed, i.e.,] in connection with a digital computer, which means that . . . the patent would wholly preempt the mathematical formula and, in practical effect, would be a patent of the algorithm itself."[10]

Claim 21 presents the same problem. It is a process for transforming an abstract mathematical model into a concrete "computerized model" of the product of Claim 1, which is necessary for realizing any practical use of the abstract mathematical model. Thus patenting the process of Claim 21 would, in practical effect, wholly preempt the mathematical model, and is therefore foreclosed by the judicial exception from *Benson*.

[10] Id. at 71-72.

C. Claim 26: Applying the Mathematical Model on a 3D Printer (Flook)

Whereas the judicial exception from *Benson* is only implicated in processes on which a patent would preempt substantially *all* practical use of a mathematical formula or principle, the judicial exception from *Flook* goes further to foreclose patenting *any* practical use of a mathematical formula or principle that does not include "some other inventive concept in its application."[11]

So while a patent on Claim 26 would not preempt all practical use of the mathematical model recited in Claim 21, and therefore does not run afoul of the judicial exception from *Benson*, the only additional idea or step in Claim 26, i.e., applying it on a 3D printer to result in making the product, was not even remotely inventive. Thus the process of Claim 26 cannot be patented according to the judicial exception from *Flook*.

D. Claim 1: The Product Itself

Claim 1 is just an ordinary product claim. There is no reason for it not to be patent-eligible, and no question that it is patent-eligible.

[11] 437 U.S. at 594.

E. Conclusion

Applying the judicial exceptions from *Benson* and *Flook* fails to fully answer the question presented.

In the progression starting from the mathematical model itself, which was already known to be ineligible for patenting from the statute,[12] then to the requirement in Claim 21 for installing it on a computer, and then to the requirement in Claim 26 for applying it on a 3D printer to result in actually making the product, there is not enough to cross the threshold of patent-eligibility with these judicial exceptions. Then, suddenly, Claim 1 does cross the threshold, but only because the judicial exceptions have fallen away, and the question of patent-eligibility is returned to the statute. Why?

Why do the judicial exceptions fall away at Claim 1? What transformed the supposedly ineligible process of Claim 26 into the eligible product of Claim 1? The process of Claim 26 produces the identical product claimed in Claim 1.

And while it is consistent with the concern in *Benson* for the transition from Claim 21 to Claim 26 to be transformative because a patent on Claim 26 would be less preemptive of the mathematical model than a patent on Claim 21, there is no obvious reason to assume that a patent on Claim 1 would be.

These issues that are raised by applying the judicial exceptions from *Benson* and *Flook* to answer the question presented are clues that these judicial exceptions may be wrong about the patent-eligibility of Claims 21 and 26. Revisiting these claims and applying a little more thought will show this to be the case.

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[12] See notes 8 and 9, supra, and the associated text.

V. REVISITING THE CLAIMS

A. Claim 26 (Flook)

Appellant has already shown that the judicial exception from *Flook* does not make sense for Claim 26. How can the product be patentable when it is claimed without any limitations on how it is made (Claim 1), but unpatentable when it is claimed more specifically to be made with a 3D printer (Claim 26)?

But there is another way to see that this judicial exception is wrong about Claim 26 that might be helpful for understanding why. It is based on the patent infringement statute 35 U.S.C. § 271(a), which provides: "whoever without authority makes, uses, offers to sell, or sells any patented invention . . . infringes the patent."

Section 271(a) says that a patent on any product (like Claim 1) is allowed to preempt any process that results in making that product (like Claim 26). It makes no difference to Section 271(a) whether the preempted process is "significantly more" than an abstract idea or not.

Section 271(a) proves that, by virtue of having invented a patentable product, Appellant has invented enough to justify preempting the processes of Claims 26 - 30 with a patent.

Given that, the only reason he *might* not also be entitled to *claim* those processes is if he did not invent them,[13] or did not adequately disclose them in the patent application.[14]

But neither is in fact the case.

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[13] As was the case in O'Reilly v. Morse, O'Reilly v. Morse, 56 U.S. 62 (1853) ("The eighth [claim] is too broad . . . It is this. 'I do not propose to limit myself to the specific machinery or parts . . . described in the . . . specification and claims . . . the essence of my invention being the use of . . .electromagnetism, however developed . . . .")

[14] See Id. Professor Morse neither invented nor disclosed using the principle of electromagnetism "however developed" as he was claiming.

And it testifies to the fallacy of the judicial exception of *Flook* that it applies the same regardless.

B. Claim 21 (Benson)

According to *Benson*, the computerized model of Claim 21 cannot be patented because a patent would, in practical effect, preempt the mathematical model. Which it would. But why would that be a problem, when it is not a problem to preempt the real product?

The only reason anyone would be interested in a computerized model of a leaf rake head product is if they were interested in the real product.

And the only reason anyone would be interested in the real product is if they were interested in making, using, or selling it.

So the only reason anyone would care about a patent preempting a computerized model of the product is if it would be helpful for making, using, or selling the real product, all of which a patent on the product will preempt anyway because of Section 271(a).

Which shows that a patent on the product itself will in practical effect preempt the computerized model, and along with it the underlying mathematical model as well, whether there is a patent on Claim 21 or not.

And, it will preempt much more. A patent on the product will also preempt all the ways of making, using, or selling it that would not require a computerized model.

So given that there is no special preemption concern involved in patenting the product itself, there should be no special preemption concern involved in patenting a computerized model of it either; thus the judicial exception from *Benson* does not make sense for Claim 21.

VI. APPLYING SECTION 101

That leaves Section 101 to decide the patent-eligibility of all three Claims 1, 21, and 26, and Section 101 does make sense. In Claim 1, Appellant's "leaf rake head principle" is claimed in the form of a product, and it satisfies Section 101 because it is a "new and useful . . . [article of] manufacture."

In Claim 26, the same principle is claimed in the form of a process for making the product, and it satisfies Section 101 because it is a "new and useful process." It is a process because it makes a product, it is new because the product is new, and it is useful because the product is useful.

Finally, in Claim 21, the same principle is claimed in the form of a process for making a computerized model of the product. It is also a new and useful process. It is a process at least because it is performed in a machine,[15] it is new because the mathematical model is new, and it is useful to the point of being essential if the product is to be made with a process like Claim 26.

Section 101 thus fully, sensibly, and coherently answers the question presented: it is enough to transform the "new" but patent-ineligible mathematical model of Claim 21 into patent-eligible subject matter to practically apply it, i.e., to apply it in any way that is useful, so that the result is both "new and useful."[16]

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[15] Benson noted this definition of the term "process" from Cochrane v. Deener, 94 U.S. 780, 788 (1876): "A process is a mode of treatment of certain materials to produce a given result. . . . If new and useful, it is just as patentable as is a piece of machinery."

According to this definition, installing a mathematical model on a computer would have to be a "process" within the meaning of the Patent Act, because a computer is a "machine" within the meaning of the Patent Act.

[16] See also note 7, supra.

VII. SOME ADDITIONAL POINTS

Appellant has essentially concluded his case, but there are a few additional points Appellant believes are worth making.

A. Applying Diehr

The court could agree that Claims 26 - 30 are patent-eligible consistent with Supreme Court precedent that is on equal footing with *Flook*. In particular, it would be consistent with the following analysis in *Diamond v. Diehr*:

> "Analyzing respondents' claims according to . . . our [prior] cases [which include Benson and Flook], we think that a physical and chemical process for molding precision synthetic rubber products falls within the § 101 categories of possibly patentable subject matter. That respondents' claims involve the transformation of an article, in this case raw, uncured synthetic rubber, into a different state or thing cannot be disputed. The respondents' claims describe in detail a step-by-step method for accomplishing such, beginning with the loading of a mold with raw, uncured rubber and ending with the eventual opening of the press at the conclusion of the cure. Industrial processes such as this are the types which have historically been eligible to receive the protection of our patent laws." [17]

Likewise, Claims 26 - 30 describe a physical process for transforming a raw material such as plastic[18] (all of Claims 26 - 30), and string trimmer line[19] (Claims 28 and 29), into a different state or thing (the leaf rake head products of Claims 1 - 5); and industrial processes for making things like leaf rakes have historically been eligible to receive patent protection.

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[17] Diamond v. Diehr, 450 U.S. 175, 184 (1981).

[18] Disclosed in Appellant's patent application Specification at Page 5, line 9.

[19] Disclosed in Appellant's patent application Specification at Page 6, lines 5 - 6.

B. Fundamental Misapprehensions of the Supreme Court Regarding Section 101

It will provide a good summary of these to address the following statements in *Bilski v. Kappos*:

> "The Court's precedents provide three specific exceptions to §101's broad patent-eligibility principles: "laws of nature, physical phenomena, and abstract ideas." . . . . While these exceptions are not required by the statutory text, they are consistent with the notion that a patentable process must be "new and useful." And, in any case, these exceptions have defined the reach of the statute as a matter of statutory *stare decisis* going back 150 years [citing Le Roy v. Tatham, 14 How. 156, 174–175 (1853)]."[20]

First, it is not an exception to Section 101 that bare principles (natural laws, natural phenomena, and abstract ideas) are ineligible for patenting.[21] The judicial exceptions from *Benson* and *Flook* are for *practical applications*.[22]

Second, while it is true that the prohibition on patenting bare principles is "*stare decisis* going back 150 years" to *Le Roy v. Tatham*, the reason *Tatham* gave for why bare principles cannot be patented was that more is needed to produce "new and useful" results.[23] So, since the judicial exceptions from *Benson* and *Flook* both stand in the way of patenting subject matter that produces new and useful results, (e.g., Claims 21 and 26 here), they are exceptions to *Tatham* just as much as they are exceptions to Section 101.

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[20] Bilski v. Kappos, 563 U.S. 593, 597 (2010).

[21] See Part IV(A), supra.

[22] See, e.g., Parts IV(B) and IV(C), supra.

[23] Note 7, supra.

C. Problems with the Court's Theories in Benson and Flook

There are fundamental reasons why the judicial exceptions from *Benson* and *Flook* should not be expected to work.

1. Benson

Copyright law has a merger doctrine, which arose only a few years prior to *Benson*,[24] that when there is merger of an expression with an unprotectable idea, copyright law should not allow for protecting the expression.[25]

Benson is the patent law equivalent, that when there is merger of a practical application with an unprotectable idea, patent law should not allow for protecting the practical application.[26]

Perhaps copyright's merger doctrine can be justified by the constitutional right to freely express ideas. But there is no comparable justification for an equivalent merger doctrine in patent law. There is no constitutional right to freely *practice* ideas.

Benson was right that if there is merger of a practical application and idea, patenting the practical application means preempting the idea. But it also means that it doesn't matter. If an idea has only one practical application, then preempting the idea is no more preemptive, and therefore should be no more objectionable, than preempting the practical application, and preempting practical applications is no more than what patents are intended to do.

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[24] In Morrissey v. Procter & Gamble Co., 379 F.2d 675 (1st Cir. 1967).

[25] See Id. at 678 - 679.

[26] See the text associated with note 10, supra.

The Court in *Benson* failed to recognize that if there is merger, the reason the Court gives for being concerned about patents preempting ideas does not apply.[27]

The Court in *Flook* seemed to notice this.[28]

[27] The Court's most recent statement of this reason comes from Alice Corp. Pty. Ltd. v. CLS Bank Int'l, 573 U.S. 208, 213 (2014): "In applying the §101 exception, we must distinguish between patents that claim the 'buildin[g] block[s]' of human ingenuity and those that integrate the building blocks into something more . . , thereby 'transform[ing]' them into a patent-eligible invention . . . . The former 'would risk disproportionately tying up the use of the underlying' ideas . . . and are therefore ineligible for patent protection. The latter pose no comparable risk of pre-emption, and therefore remain eligible for the monopoly granted under our patent laws."

But in cases of merger, where "tying up" an idea is, in practical effect, no different from "tying up" a practical application, then by definition, tying up the practical application is not "disproportionately" tying up the idea.

[28] 437 U.S. 598 (footnote 11) ("it is not entirely clear why a process claim is any more or less patentable because the specific end use contemplated is the only one for which the algorithm has any practical application").

2. Flook

Flook goes wrong fundamentally because it is inconsistent with the constitutional purpose of the patent laws "to promote the . . . Progress of useful Arts."[29]

Typically, such Progress comes from inventive practical applications of old principles.[30] But it can come just as well from non-inventive practical applications of newly invented or discovered principles, like applying the new algorithm for updating alarm limits in *Flook* in a conventional chemical conversion process, or applying Appellant's new mathematical model of a leaf rake head in a conventional 3D printing process.

Whether it is an inventive and practically useful application of an old principle, or a non-inventive but nevertheless practically useful application of a new principle, the result is the same: a new and useful practical application that has *at least the potential* of promoting the Progress of useful Arts and thereby serving the constitutional purpose of the patent system.

It is inconsistent with this purpose to treat any part of claimed invention as if it were prior art even when it isn't, and thereby as if it cannot contribute to promoting the Progress of useful Arts even when it can.

Claim 26 here is an example.

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[29] U.S. Const. Article 1, Clause 8, Section 8.

[30] The invention in Diehr may or may not have been such an example–the Court did not say because it did not matter for determining whether the subject matter was merely eligible for patenting. 450 U.S. at 191 ("it may later be determined that the . . . process [in Diehr] is not deserving of patent protection because it fails to satisfy the statutory conditions of novelty under § 102 or nonobviousness under § 103. A rejection on either of these grounds does not affect the determination that respondents' claims recited subject matter which was eligible for patent protection under § 101").

IX. CONCLUDING REMARKS

Claim 26 demonstrates the fallacy of the doctrine of *Flook*, of treating principles as if they were prior art when they really aren't. It is this doctrine that is responsible for the nonsensical finding by the Patent Office that the patentable product of Claim 1 loses its patentability when it is claimed to be made with a 3D printer.

And Claim 21 demonstrates the fallacy of *Benson*'s merger doctrine. There is no practical use of a mathematical model of Appellant's leaf rake head product other than to practice Appellant's leaf rake head product. So from a preemption standpoint, "tying up" a mathematical model of this product should present no more than the ordinary statutory concerns involved in deciding whether it is appropriate to allow a patent to "tie up" the product itself. Concerns that have been fully addressed in the affirmative by the Patent Office finding that Claim 1 is condition for allowance.

X. PRAYER FOR RELIEF

Appellant respectfully requests that this court reverse the Decision of the PTAB as to all of Claims 21 - 35 because they all satisfy the "new and useful process" requirements of 35 U.S.C. § 101.

/s/ Garth Janke

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GARTH JANKE

Appeal 2021-005284
Application 16/781,695
Technology Center 2100

Before MARC S. HOFF, BETH Z. SHAW, and JOYCE CRAIG, *Administrative Patent Judges.*

CRAIG, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant[1] appeals from the Examiner's decision to reject claims 21–35. *See* Final Act. 1. Claims 6–20 have been canceled. *See id.* at 2. Claims 1–5 were withdrawn from consideration previously, as a result of a restriction requirement, but after a successful Petition under 37 C.F.R. § 1.144, were rejoined and allowed. Ans. 14. We have jurisdiction under 35 U.S.C. § 6(b). We AFFIRM.

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[1] We use the word "Appellant" to refer to "applicant" as defined in 37 C.F.R. § 1.42. Appellant identifies the named inventor, Garth Janke, as the real party in interest. Appeal Br. 2.

CLAIMED SUBJECT MATTER

The claims are directed to a product and process for enabling a clog-resistant feature in a hand-held "lawn and garden" type leaf rake. *See* Spec. Title, Field of the Invention. Claim 21, reproduced below, illustrates the claimed subject matter:

> 21. A process for enabling a clog-resistant feature in a handheld leaf rake, comprising installing a first mathematical model on a computer, the first mathematical model describing first mathematical equations that define a leaf rake head product comprising a plurality of independent raking tines extending from a common body portion, wherein each raking tine has an entire length over which the raking tine is an elongate member first extending substantially linearly, thence turning through a distinct bent portion, and thence again extending substantially linearly to define an elongate raking portion of the raking tine terminating in a raking tip, the bent portion extending over less than 20% of said length, the product further comprising, in each of the plurality of raking tines, at least one hole extending through and enclosed by the respective raking portion.

Appeal Br. 28 (Claims App.).

REJECTION

Claims 21–35 stand rejected under 35 U.S.C. § 101 as directed to a judicial exception, without significantly more. Final Act. 3–13.

ANALYSIS

Appellant asks the Board to affirm the §101 rejections of claims 21–35. Appeal Br. 6. Appellant agrees with the Examiner's § 101 rejections and presents no arguments that the claims are patent eligible. *Id.* at 5–6; Reply Br. 2. Arguments not made are forfeited. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Appellant uses the remainder of the Appeal Brief to explain why Appellant disagrees with the Supreme Court's § 101 jurisprudence, specifically the Court's decisions in *Gottschalk vs. Benson*, 409 U.S. 63 (1972) and *Parker vs. Flook*, 437 U.S. 584 (1978). Appeal Br. 6–26.

DECISION

We affirm *pro forma* the decision of the Examiner rejecting claims 21–35 as directed to patent-ineligible subject matter.

DECISION SUMMARY

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
21–35	101	Eligibility	21–35	

TIME PERIOD FOR RESPONSE

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

AFFIRMED