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Johnson, Marcou & Isaacs, LLC 27 City Square, Suite 1 Hoschton, GA 30548			CRANFORD, MICHAEL D	
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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* WILLIAM JOHNSON and CRAIG VALLORANO

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Appeal 2015–006385  
Application 13/327,843  
Technology Center 3600

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Before: ANTON W. FETTING, BIBHU R. MOHANTY, and  
KENNETH G. SCHOPFER, *Administrative Patent Judges*.  
FETTING, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

William Johnson and Craig Vallorano (Appellants) seek review under 35 U.S.C. § 134 of the Examiner’s Final rejection of claims 16–31, the only claims pending in the application on appeal.<sup>1</sup> We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> Our decision will make reference to the Appellants’ Appeal Brief (“App. Br.,” filed April 28, 2014) and Reply Brief (“Reply Br.,” filed June 10, 2015), and the Examiner’s Answer (“Ans.,” mailed April 10, 2015), and Final Action (“Final Act.,” mailed October 22, 2013).

The Appellants invented a way of managing transaction card accounts.  
Specification para. 2.

An understanding of the invention can be derived from a reading of  
exemplary claim 16, which is reproduced below (bracketed matter and some  
paragraphing added).

16. A method for managing transaction card accounts,  
comprising:  
[1] accumulating, using a computer having a processor coupled  
to memory,  
    charge balances  
    for a plurality of existing transaction card accounts;  
[2] identifying, using the computer,  
    an occurrence of a termination of a private label or co-  
    branded agreement  
    related to at least a first portion of said existing  
    transaction card accounts  
    or  
    a predetermined level of inactivity on at least a second  
    portion of said existing transaction card accounts;  
[3] substituting, using the computer,  
    said identified first portion of the existing transaction  
    card accounts  
    with  
    a different transaction card account usable in a greater  
    number of transaction types and with a greater number of  
    merchants than the transaction card accounts related to  
    said private label or co-branded agreement  
    upon identifying the occurrence of the termination of the  
    private label or co-branded agreement;  
and  
[4] substituting, using the computer,  
    said identified second portion of the existing transaction  
    card accounts  
    with  
    a different transaction card account

having a non-industry standard payment hierarchy  
in which payments are applied to  
balances accruing interest at non-  
promotional annual percentage rates of  
interest  
before  
balances accruing interest at a promotional  
annual percentage rate of interest  
that is less than the non-promotional  
annual percentage rates.

The Examiner relies upon the following prior art:

Cleary et. al. ("Clearly")	US 2005/0065877 A1	Mar. 24, 2005
Pletz et al ("Pletz")	US 2008/0277465 A1	Nov. 13, 2008

Claims 16–31 stand rejected under 35 U.S.C. § 101 as directed to non-  
statutory subject matter.

Claims 16–31 stand rejected under 35 U.S.C. § 103(a) as unpatentable  
over Pletz and Cleary.

## ISSUES

The issues of eligible subject matter turn primarily on whether the claims  
are directed to an abstract idea and recite no more than conceptual advice.  
The issues of obviousness turn primarily on whether the Examiner has  
shown the art applied describes all of the claim limitations.

## FACTS PERTINENT TO THE ISSUES

The following enumerated Findings of Fact (FF) are believed to be supported by a preponderance of the evidence.

### *Facts Related to the Prior Art*

#### *Pletz*

01. Pletz is directed to a card product or access mechanism and, more particularly, to a card product or access mechanism with multiple relationships with an issuing entity (e.g., bank, etc.) where each relationship may be defined by one or more sets of rules that are customized for a particular customer. Pletz para. 2.
02. A basic credit card transaction starts with the purchase of a good or service from a merchant with a credit card, which may be a private label card. Another type of credit card is a retail store credit card, which are credit cards generally issued by retail stores. These cards carry the name or logo of the issuing retail store and typically can only be used at the store that issued the card, including affiliated stores or other providers. Private label programs offer store cards by a third-party entity on behalf of the retailer. Most customers have multiple credit cards, which are separate and independent from each other. For example, a customer may have a co-branded credit card, several private label cards, debit cards as well as stored value cards for specific purchases. Pletz paras. 5–7.
03. Pletz describes a shopper having a single card product with a private label account and a co-brand account. When it comes time to make payments, the customer may allocate a percentage of her

single payment to each account. For example, the customer may allocate 40% to the private label account and 60% to the co-brand account. Pletz para. 27.

04. Pletz describes customer behavior data associated with a debit account as well as a stored value card may be monitored. As the customer continues to make purchases and avoids delinquent behavior on the debit account, the card issuer may offer a private label account for the local music store, or other merchant or service provider. The private label account may initially start with a low line of credit and gradually increase as the customer's behavior continues to be positive. Once the customer establishes a positive credit behavior history, the card issuer may then offer the customer a co-branded account. Pletz para. 47.
05. Pletz describes how, after losing a stored value card, one may deactivate the lost stored value card and generate a new stored value card. In addition, a customer may access a portable device to deactivate (or otherwise modify) the accounts. Pletz para. 76.

*Cleary*

06. Cleary is directed to bank cards, such as debit cards, checking cards and ATM cards, and more particularly, to an inactive or dead bank card distributed in unsolicited fashion to potential customers. Cleary para. 1.
07. Cleary describes distributing unsolicited bank cards to potential customers by identifying a pool of potential new bank account holders; determining if a person from the pool is an existing bank account holder; determining if the person is eligible to become a

bank account holder if not presently a bank account holder; creating a dead bank card including embossed information and magnetic stripe information; and distributing the dead bank card to that person. The dead card is a bank card (e.g., an ATM card, checking card, debit card, or stored value card) not yet active, but which reflects and identifies a bank account (e.g., checking account, savings account, loan account, stored value account, or sponsor-funded stored value account) that will be activated upon customer acceptance of the offer for a new bank account. Cleary para. 7.

08. Cleary describes evaluating a potential new bank account holder by determining whether the potential customer was the holder of a bank account that was previously closed with that bank. For such potential customers, the identification of a previously-closed account may affect whether the bank decides to distribute a dead bank card in the first place and/or whether that person receives a special incentive to induce him/her to resume banking with that bank. Cleary para. 8.
09. Cleary describes determining if a credit applicant is a past bank account holder. This determination can be useful in two regards. First, the bank may wish to evaluate the reason the prior bank account was closed. For example, if the account was closed because the customer was continually bouncing checks or otherwise attempting to overdraw an account, or for other reasons indicating that the person was a poor customer, the bank may not wish to solicit that customer for a new bank account. In addition,

or alternatively, the bank may wish to know whether the person is a prior bank account holder so that the dead bank card overture can be handled differently. For example, the overture communication to that person might reference the person's status as a prior bank account holder and/or might include the offer of an incentive for the person to reestablish a bank account with the bank. Cleary para. 43.

## ANALYSIS

*Claims 16–31 rejected under 35 U.S.C. § 101 as directed to non–statutory subject matter*

### The Supreme Court

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. First, [] determine whether the claims at issue are directed to one of those patent-ineligible concepts.[] If so, we then ask, “[w]hat else is there in the claims before us?”[] To answer that question, []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. [The Court] described step two of this 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.”

*Alice Corp., Pty. Ltd. v CLS Bank Intl*, 134 S.Ct. 2347, 2355 (2014) (citing *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 132 S.Ct. 1289 (2012)).



To perform this test, we must first determine whether the claims at issue are directed to a patent-ineligible concept. The Examiner finds the claims are directed to managing transaction card accounts.

While the Court in *Alice* made a direct finding as to what the claims were directed to, we find that this case's claims themselves and the Specification provide enough information to inform one as to what they are directed to.

The preamble to claim 16 recites that it is a method for managing transaction card accounts. The steps in claim 16 result in substituting existing accounts with new accounts. The Specification at paragraph 2 recites that the invention relates to managing transaction card accounts. Thus, all this evidence shows that claim 16 is directed to managing credit accounts, i.e. credit account management.

It follows from prior Supreme Court cases, and *Bilski* in particular, that the claims at issue here are directed to an abstract idea. Like the risk hedging in *Bilski*, the concept of credit account management is a fundamental business practice long prevalent in our system of commerce. The use of credit account management is also a building block of credit financing. Thus, credit account management, like hedging, is an “abstract idea” beyond the scope of §101. *See Alice Corp. Pty. Ltd.*, 134 S.Ct.\_at 2356.

As in *Alice Corp. Pty. Ltd.*, we need not labor to delimit the precise contours of the “abstract ideas” category in this case. It is enough to recognize that there is no meaningful distinction in the level of abstraction between the concept of risk hedging in *Bilski* and the concept of credit account management at issue here. Both are squarely within the realm of “abstract ideas” as the Court has used that term. *See Alice Corp. Pty. Ltd.*,

134 S.Ct. at 2357. Further, claims involving data collection, analysis, and display are directed to an abstract idea. *Elec. Power Grp. v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016) (Holding that “collecting information, analyzing it, and displaying certain results of the collection and analysis” are “a familiar class of claims ‘directed to’ a patent ineligible concept.”); *see also In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d at 611; *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093–94 (Fed. Cir. 2016). Claim 16, unlike the claims found non-abstract in prior cases, uses generic computer technology to perform data collection, analysis, and substitution (storage) and does not recite an improvement to a particular computer technology. *See, e.g., McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314–15 (Fed. Cir. 2016) (Finding claims not abstract because they “focused on a specific asserted improvement in computer animation.”). As such, claim 16 is directed to the abstract idea of receiving, analyzing, and storing data.

The remaining claims merely describe types of accounts and parameters employed. We conclude that the claims at issue are directed to a patent-ineligible concept.

The introduction of a computer into the claims does not alter the analysis at *Mayo* step two

the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention. Stating an abstract idea “while adding the words ‘apply it’” is not enough for patent eligibility.[] Nor is limiting the use of an abstract idea “to a particular technological environment.” Stating an abstract idea while adding the words “apply it with a computer” simply combines those two steps, with the same deficient result. Thus, if a patent’s recitation of a computer amounts to a mere instruction to “implement[t]” an abstract

idea “on . . . a computer,”[] that addition cannot impart patent eligibility. This conclusion accords with the preemption concern that undergirds our §101 jurisprudence. Given the ubiquity of computers,[] wholly generic computer implementation is not generally the sort of “additional feature[e]” that provides any “practical assurance that the process is more than a drafting effort designed to monopolize the [abstract idea] itself.”

*Alice Corp. Pty. Ltd.*, 134 S.Ct. at 2358 (citations omitted).

“[T]he relevant question is whether the claims here do more than simply instruct the practitioner to implement the abstract idea [] on a generic computer.” *Alice Corp. Pty. Ltd.*, 134 S.Ct. at 2359. They do not.

Taking the claim elements separately, the function performed by the computer at each step of the process is purely conventional. Using a computer to add numbers, identify data meeting specified criteria, make arithmetic interest calculations, and substitute data sets amounts to electronic data query and retrieval—one of the most basic functions of a computer. All of these computer functions are well-understood, routine, conventional activities previously known to the industry. In short, each step does no more than require a generic computer to perform generic computer functions.

Considered as an ordered combination, the computer components of Appellants’ method add nothing that is not already present when the steps are considered separately. Viewed as a whole, Appellants’ method claims simply recite the concept of credit account management as performed by a generic computer. To be sure, the claims recite doing so by advising one to aggregate plural account balances for monitoring and substitute one account number for another when certain criteria are met. But this is no more than abstract conceptual advice on the parameters for such credit management

and the generic computer processes necessary to process those parameters, and do not recite any particular implementation.

The method claims do not, for example, purport to improve the functioning of the computer itself. Nor do they effect an improvement in any other technology or technical field. The 10 pages of Specification spell out different card categories and their attendant promotional features using this concept, different criteria, and the particular steps such conventional processing would entail based on the concept of aggregating such accounts. They do not describe any particular improvement in the manner a computer functions. Instead, the claims at issue amount to nothing significantly more than an instruction to apply the abstract idea of credit account management using some unspecified, generic computer. Under our precedents, that is not enough to transform an abstract idea into a patent-eligible invention. *See Alice Corp. Pty. Ltd.* at 2360.

As to the structural claims, they

are no different from the method claims in substance. The method claims recite the abstract idea implemented on a generic computer; the system claims recite a handful of generic computer components configured to implement the same idea. This Court has long “warn[ed] . . . against” interpreting § 101 “in ways that make patent eligibility ‘depend simply on the draftsman’s art.’”

*Alice Corp. Pty. Ltd.* at 2360.

We are not persuaded by Appellants' argument that there is no evidence that the invention as defined by the particular claim limitations is simply some abstract method of merely managing transaction card accounts. Reply Br. 3. Appellants conflate the two tests in *Alice*. The first step asks whether the claims are directed to an abstract idea; not whether the claims are an

abstract idea. We summarized the evidence that the claims are directed to an abstract idea, *supra*.

We are not persuaded by Appellants' argument that the Examiner has not shown preemption. Reply Br. 4. First, that the claims do not preempt all forms of the abstraction or may be limited to the abstract idea in the e-commerce setting do not make them any less abstract. *See OIP Technologies, Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1360–1361 (2015). Second, preemption is one test, but not the only test for finding a claim directed to an abstract idea. Third, as the claims do no more than lay out conceptual advice on one way to substitute credit accounts, and recite doing so by a general purpose computer, by definition of preemption this precludes all methods of following that advice. The recitation of a computer does not alter this analysis.

*Claims 16–31 rejected under 35 U.S.C. § 103(a) as unpatentable over Pletz and Cleary*

We are persuaded by Appellants' argument that the art fails to describe identifying an occurrence of a termination of a private label or co-branded agreement related to at least a first portion of said existing transaction card accounts or a predetermined level of inactivity on at least a second portion of said existing transaction card accounts. App. Br. 10–11; *see also* Reply Br. 5. As Appellants contend, the portions of the references Examiner cites do not describe this limitation.

CONCLUSIONS OF LAW

The rejection of claims 16–31 under 35 U.S.C. § 101 as directed to non–statutory subject matter is proper.

The rejection of claims 16–31 under 35 U.S.C. § 103(a) as unpatentable over Pletz and Cleary is improper.

DECISION

The rejection of claims 16–31 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). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2011).

AFFIRMED