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14/212,998	03/14/2014	Lawrence M. Levenstein	CHI-92601	6505

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EXAMINER	
FELTEN, DANIEL S	

ART UNIT	PAPER NUMBER
3692	

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

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte LAWRENCE M. LEVENSTEIN

Appeal 2016-006036
Application 14/212,998
Technology Center 3600

Before MURRIEL E. CRAWFORD, KENNETH G. SCHOPER, and BRADLEY B. BAYAT, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*

DECISION ON APPEAL

Appellant seeks our review under 35 U.S.C. § 134 of the Examiner's final decision rejecting claims 1–12. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

Upon consideration of the evidence on this record and each of Appellant's contentions, we find that the preponderance of evidence on this record supports the Examiner's conclusion that the subject matter of Appellant's claims 1–12 are directed to non-statutory subject matter. In this regard, we adopt the findings and reasoning of the Examiner found on pages 6–9 of the Final Action. Specifically, we agree with the Examiner that the

claims are directed to an abstract idea and that the claims do not include significantly more than the abstract idea. We also adopt the Examiner's response to the Appellant's arguments, as found on pages 6–8 of the Answer.

We add the following for emphasis only.

We agree with the Examiner's finding that the claims are directed to the fundamental economic practice of funding an activity via a contract using a mathematical relationship or formula and that therefore the claims are directed to an abstract idea. We hold that the recitation of providing refill stations that refill fluid products is a well-understood conventional activity already engaged in by those skilled in the art, and therefore, when viewed as a whole, adds nothing significant to the abstract idea. *See Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1298 (2012). We do not agree that the withdrawal of the prior art rejection is an acknowledgement that the invention is novel. Rather, the withdrawal of the prior art rejection means only that the Examiner is not pursuing that particular rejection and may relate to the perceived strength of that particular prior art rejection by the Examiner or may be an action to limit the issues on appeal because the Examiner is of the opinion that the 101 rejection is dispositive or may have been done for other reasons.

TIME PERIOD

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) (2009).

ORDER

AFFIRMED