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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/348,511	01/11/2012	David Ching Li	P2395.10157US07	2515
132897	7590	03/22/2018	EXAMINER	
Maschoff Brennan/ PayPal 1389 Center Drive, Ste 300 Park City, UT 84098			KANERVO, VIRPI H	
			ART UNIT	PAPER NUMBER
			3691	
			NOTIFICATION DATE	DELIVERY MODE
			03/22/2018	ELECTRONIC

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* DAVID CHING LI, DAVID YOUNG-JUNE KANG,  
BENJAMIN GREGG LISTWON, and MAX R. LEVCHIN

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Appeal 2016-007807  
Application 13/348,511  
Technology Center 3600

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Before NATHAN A. ENGELS, JAMES W. DEJMEK, and  
MICHAEL M. BARRY, *Administrative Patent Judges*.

BARRY, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants<sup>1</sup> appeal under 35 U.S.C. § 134(a) from a Non-Final Rejection of claims 1–21, which are all of the pending claims. We have jurisdiction under 35 U.S.C. § 6(b). *See Ex parte Lemoine*, 46 USPQ2d 1420, 1423 (BPAI 1994) (precedential).

We affirm.

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<sup>1</sup> Appellants identify PayPal, Inc. as the real party in interest. App. Br. 2.

*Introduction*

Appellants state their Application relates to “facilitating electronic payment of goods and services corresponding to on-line purchases.” Spec. ¶ 10. Appellants’ disclosed and claimed invention relates to “facilitating payment of goods and services via a third-party electronic payment service.” Spec. ¶ 12. In a disclosed embodiment, to facilitate transaction payments, a merchant provides a payment service server with a return address (URL) for its website to which the merchant wants the payment service server to send (re-direct) users during a purchase transaction. *See* Spec. ¶¶ 15, 18, Fig. 2 (items 202, 214). The return address is stored at the payment service server in user profile information. Spec. ¶ 27.

Claim 1 is representative:

1. A method comprising:

communicating a web page, over a network, to a merchant server associated with a merchant, the web page including a plurality of input mechanisms for receiving a plurality of reference return network addresses;

receiving a first reference return network address, over the network, from the merchant, the first reference return network address being received at a payment service server, the first reference return network address identifying an interface that is hosted by a first merchant web site that is operated by the merchant and the interface being utilized as a first landing page hosted by the first merchant web site to which a consumer user is redirected to by the payment server, the redirection enabling execution of a transaction between the consumer user and the merchant;

responsive to the redirection, completing a purchase transaction between the consumer user and the merchant; and

storing the first reference return network address at the payment service server in user profile information that is associated with the merchant.

App. Br. 26 (Claims App'x).

### *Rejections and References*

1. Claims 1–21 stand rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. Non-Final Act. 5–6.

2. Claims 1–21 stand rejected under pre-AIA 35 U.S.C. § 103(a) as unpatentable over Agrawal et al. (US 2004/0098313 A1; pub. May 20, 2004, hereinafter “Agrawal”), Bartoli et al. (US 6,047,268; iss. Apr. 4, 2000, hereinafter “Bartoli”), and Armes et al. (US 2003/0023549 A1; pub. Jan. 30, 2003, hereinafter “Armes”). Non-Final Act. 6–10.

### ISSUES

We review the appealed rejections for error based upon the issues identified by Appellants and in light of the arguments and evidence produced thereon. *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential). Accordingly, the issues are whether the Examiner errs in:

- (a) concluding claims 1–21 are directed to patent-ineligible subject matter (App. Br. 8–22; Reply Br. 2–5); and
- (b) finding the combination of Agrawal, Bartoli, and Armes teaches or suggests “responsive to the redirection, completing a purchase transaction between the consumer user and the merchant,” as recited in independent claim 1, and recited commensurately in independent claims 11 and 21 (App. Br. 23–24; Reply Br. 6).

## ANALYSIS

### *The 35 U.S.C. § 101 Rejection*

Appellants dispute the Examiner’s conclusion that claims 1–21 are directed to patent-ineligible subject matter under 35 U.S.C. § 101. App. Br. 8–22; Reply Br. 2–5.

Appellants assert the claims are entitled to a streamlined analysis as set forth in the *2014 Interim Guidance on Patent Subject Matter Eligibility*, 79 Fed. Reg. 74618 (December 16, 2014) (“Interim Guidance”). App. Br. 13–15. “For purposes of efficiency *in examination*, a streamlined analysis can be used for a claim that may or may not recite a judicial exception but, when viewed as a whole, *clearly* does not seek to tie up any judicial exception such that others cannot practice it.” Interim Guidance, 79 Fed. Reg. at 74625 (emphases added). Thus, a streamlined eligibility analysis is available to *examiners* who are of the view that a claim clearly does not have a subject matter eligibility problem. By contrast, the Interim Guidance indicates a “full analysis should be conducted” if there is doubt that the applicant is effectively seeking coverage for a judicial exception. *Id.*

Thus, it is at an *examiner’s discretion* as to whether a streamlined analysis is appropriate. Because the Examiner determined the application may be directed to patent-ineligible subject matter, a full analysis, as conducted by the Examiner, was appropriate.

Under 35 U.S.C. § 101, an invention is patent eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. The Supreme Court, however, long has interpreted § 101 to include an implicit exception: “[l]aws of nature, natural

phenomena, and abstract ideas” are not patent eligible. *See, e.g., Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014).

In *Alice*, the Supreme Court reiterated the two-step framework set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66, 72–73, 77–80 (2012), “for distinguishing patents that claim . . . abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice*, 134 S. Ct. at 2355. If a claim falls within one of the statutory categories of patent eligibility (i.e., a process, machine, manufacture or composition of matter), the first step is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts,” e.g., an abstract idea. *Id.* If the claim is directed to an ineligible concept, the second step is to determine whether any claim elements, when “consider[ed] both individually and ‘as an ordered combination[,]’ . . . ‘transform the nature of the claim’ into a patent-eligible application” to ensure the claim amounts to significantly more than the judicial exception itself. *Id.* (quoting *Mayo*, 566 U.S. at 78–80). Our analysis below focuses on whether the Examiner has committed reversible error under the two-step *Alice* framework.

The Examiner concludes that although Appellants’ claimed invention broadly falls within the statutory categories of patent eligibility, the pending claims are directed to an abstract idea, without reciting significantly more. Non-Final Act. 5–6 (explaining “these claims do not effect an improvement to another technology or technical field; the claims do not amount to an improvement to the functioning of a computer itself; and the claims do not move beyond a general link of the use of an abstract idea to a particular technological environment”). The Examiner characterizes the claims as

directed to the abstract idea of “facilitating electronic payments for goods and services” and finds they “merely amount to the application or instructions to apply the abstract idea . . . on a computer, and is [sic] considered to amount to nothing more than requiring a generic computer system to merely carry out the abstract idea itself.” *Id.* at 5–6. The Examiner explains that “the claims, when considered as a whole, are nothing more than the instruction to implement the abstract idea in a particular, albeit well-understood, routine and conventional technological environment.” *Id.* at 6. The Examiner further finds the claims “do not recite ‘significantly more’ than any alleged abstract idea because the programming of a general purpose computer or a microprocessor does nothing to limit the scope of the claim and such programming does not create a ‘significantly more’ limitation.” *Id.* at 3.

Appellants argue that by not providing sufficient evidence in support of the rejection, the Examiner fails to make out a prima facie case of patent ineligibility under § 101. App. Br. 9–13. We disagree. The Federal Circuit has repeatedly noted that “the prima facie case is merely a procedural device that enables an appropriate shift of the burden of production.” *Hyatt v. Dudas*, 492 F.3d 1365, 1369 (Fed. Cir. 2007) (citing *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992)). The Federal Circuit also has held that the USPTO carries its procedural burden of establishing a prima facie case when its rejection satisfies the requirements of 35 U.S.C. § 132 by notifying the applicant of the reasons for rejection, “together with such information and references as may be useful in judging of the propriety of continuing the prosecution of [the] application.” *In re Jung*, 637 F.3d 1356, 1362 (Fed. Cir. 2011) (quoting 35 U.S.C. § 132). Accordingly, the Office must set forth the

statutory basis of the rejection and any useful references and/or other information relied upon in a sufficiently articulate and informative manner as to meet the notice requirement of § 132. *Id.*<sup>2</sup>

Examiners need not provide evidentiary support in every case before a conclusion can be made that a claim is directed to an abstract idea. *See, e.g.,* United States Patent and Trademark Office, *July 2015 Update: Subject Matter Eligibility*, § IV (July 30, 2015 update to the Interim Guidance) (available at [www.uspto.gov/sites/default/files/documents/ieg-july-2015-update.pdf](http://www.uspto.gov/sites/default/files/documents/ieg-july-2015-update.pdf) (last accessed Mar. 8, 2017)).

The courts consider the determination of whether a claim is eligible (which involves identifying whether an exception such as an abstract idea is being claimed) to be a question of law. Accordingly, courts do not rely on evidence that a claimed concept is a judicial exception, and in most cases resolve the ultimate legal conclusion on eligibility without making any factual findings.

*Id.* (citations omitted). Evidence may be helpful in certain situations where, for instance, facts are in dispute. But it is not always necessary. It is not necessary in this case.

Here, in rejecting the claims under § 101, the Examiner analyzed the claims using the *Alice* two-step framework. Specifically, the Examiner notified Appellants that the claims are directed to “facilitating electronic payments for goods and services,” and thus to an abstract idea, and that the additional claim elements, other than the abstract idea, are merely generic computing elements that do not amount to significantly more than the

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<sup>2</sup> *See also Chester v. Miller*, 906 F.2d 1574, 1578 (Fed. Cir. 1990) (Section 132 “is violated when a rejection is so uninformative that it prevents the applicant from recognizing and seeking to counter the grounds for rejection.”).



abstract idea. Non-Final Act. 2–3, 5–6. Therefore, the Examiner notified Appellants of the reasons for the rejection together with sufficient information useful in judging the propriety of continuing prosecution of the application. *See* 35 U.S.C. § 132. In doing so, we find that the Examiner set forth a prima facie case of unpatentability, without the need to provide a reference establishing that the claims are directed to an abstract idea.

*Alice Step One*

Appellants argue the pending claims are not directed to a judicial exception and the Examiner’s characterization of the independent claims as an abstract idea is inaccurate. App. Br. 15–19; Reply Br. 2–3. More specifically, Appellants assert the claims are not directed to a judicial exception because the claims are not directed to a law of nature or the following types of abstract ideas—an idea of itself, a mathematical formula or algorithm, a method of organizing human activity, or a fundamental economic practice. *Id.* at 15–19. Instead, Appellants assert the claims recite a specific set of operations that solves technological problems relating to the conventional industry practices of receiving payment for goods, fraud protection, and accounting simplicity. App. Br. 16–17, 21–22. For the reasons discussed *infra*, we disagree with Appellants and agree with the Examiner that the claims are directed to an abstract idea.

We disagree with Appellants because, as explained *infra*, the claims are directed to a fundamental economic practice. We also note, contrary to Appellants assertions, the categories of abstract ideas enumerated by Appellants are merely exemplary and are not limiting. *See Alice*, 134 S. Ct. at 2355–57; *Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1313 (Fed. Cir. 2016) (“[T]he category of abstract ideas is not limited to

economic or commercial practices or methods of organizing human activity.”).

In determining whether a claim is directed to an abstract idea, instead of using a definition of an abstract idea, “the decisional mechanism courts now apply is to examine earlier cases in which a similar or parallel descriptive nature can be seen—what prior cases were about, and which way they were decided.” *Amdocs (Isr.) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1294 (Fed. Cir. 2016) (citing *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353–54 (Fed. Cir. 2016)).<sup>3</sup> As part of this inquiry, we must “look at the ‘focus of the claimed advance over the prior art’ to determine if the claim’s ‘character as a whole’ is directed to excluded subject matter.” *Affinity Labs of Tex., LLC v. DirecTV, LLC*, 838 F.3d 1253, 1257 (Fed. Cir. 2016).

Generally, claim 1 recites the steps of communicating data to a merchant, a payment service server receiving data from the merchant such that the payment service can redirect the consumer to the merchant, thereby enabling execution of a purchase transaction between the consumer and merchant, completing the purchase transaction, and storing the data received from the merchant. *See* Ans. 8 (finding the independent claim limitations that “set forth or describe the abstract idea are [the] ‘communicating,’ ‘receiving,’ ‘completing,’ and ‘storing’ steps”). As further context, Appellants describe their invention as facilitating payment of goods and services corresponding to purchases by providing an efficient mechanism for

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<sup>3</sup> *Accord* July 2015 Update to the Interim Guidance at 3 (instructing examiners that “a claimed concept is not identified as an abstract idea unless it is similar to at least one concept that the courts have identified as an abstract idea.”).

enabling merchants to offer purchase payments via third-party payment services. Spec. ¶¶ 10, 12, 24.

Although the claims recite using one or more computer processors, a web site and a web page, a network including a network address, and servers, we agree with the Examiner that the claims are directed to an abstract idea—facilitating payment for goods and services via a third-party, which is a fundamental economic practice. *See* Non-Final Act. 2–3, 5–6; Ans. 8–9.

The Supreme Court similarly has determined that various fundamental economic practices are “squarely within the realm of ‘abstract ideas.’” *Alice*, 134 S. Ct. at 2357 (discussing methods for risk hedging and third-party intermediated settlement as non-limiting examples of fundamental economic practices). The Federal Circuit also has concluded that abstract ideas include fundamental economic practices such as *processing information through a clearinghouse and the local processing of payments for remotely purchased goods*. *Dealertrack, Inc. v. Huber*, 674 F.3d 1315, 1333 (Fed. Cir. 2012); *Inventor Holdings, LLC v. Bed Bath & Beyond, Inc.*, 876 F.3d 1372 (Fed. Cir. 2017). In *Inventor Holdings*, our reviewing court concluded claims similar to Appellants’ claims patent ineligible as directed to an abstract idea, explaining that

[t]he idea that a customer may pay for items ordered from a remote seller at a third-party’s local establishment is the type of fundamental business practice that, when implemented using generic computer technology, is not patent-eligible under *Alice*, 134 S. Ct. at 2355 (quoting *Le Roy v. Tatham*, 55 U.S. (14 How.) 156, 175, 14 L. Ed. 367 (1852) (“A principle, in the abstract, is a fundamental truth; an original cause; a motive; these cannot be patented, as no one can claim in either of them an exclusive right.”)).

876 F.3d at 1378. Additionally, as the Examiner concludes, the Federal Circuit has said that abstract ideas include *collecting data, recognizing certain data within the collected data set, and storing the data*.<sup>4</sup> Ans. 8 (citing *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat. Ass’n*, 776 F.3d 1343 (Fed. Cir. 2014)).

Further, we disagree with Appellants’ characterization of the claims as a specific way computers operate and an improvement to computer functionality itself, similar to the claims in *Enfish*.<sup>5</sup> Reply Br. 2–3. The claims in *Enfish* were directed to a specific improvement in the way computers operate—embodied in a self-referential database table—and recited technical details for a software component that distinguished that particular software component from the prior art, thus improving how the computer was configured. *See Enfish*, 822 F.3d at 1338–39. By contrast, the claims at issue focus not on such an improvement in computer technology, but on an abstract idea—facilitating payment for goods and services via a third-party—that uses generic computing elements. *See Elec. Power Grp.*, 830 F.3d at 1354 (explaining that claims directed to collecting information, analyzing the information, and displaying the results were different from the claims in *Enfish*: “the focus of the claims is not on such

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<sup>4</sup> The Federal Circuit also recently affirmed two District Court decisions finding abstract the ideas of *performing a sales transaction over the Internet and financing purchases via a series of checks*. *Priceplay.com, Inc. v. AOL Advert., Inc.*, 83 F. Supp. 3d 577, 581 (D. Del. 2015), *aff’d*, 627 F. App’x 925 (Fed. Cir. 2016); *Glob. Check Servs., Inc. v. Elec. Payment Sys., LLC*, No. CV14CV01430PABCBS, 2016 WL 9735716, at \*6 (D. Colo. Sept. 14, 2016), *aff’d*, 698 F. App’x 611 (Fed. Cir. 2017).

<sup>5</sup> *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016).

an improvement in computers as tools, but on certain independently abstract ideas that use computers as tools.”).

We also disagree with Appellants’ characterization of the claims as solving a technological problem in conventional industry practice that is rooted in computer technology and arising particularly in electronic storefronts and online commerce, similar to the claims in *Diehr*<sup>6</sup> and *DDR*.<sup>7</sup> App. Br. 21–22. The claims in *Diehr* have nothing to do with solving a problem relating to purchase payments or transaction parties, but instead they use a digital computer to determine the amount of time that a rubber molding press should remain closed during the synthetic rubber-curing process. *See Diehr*, 450 U.S. at 208. Accordingly, we find the claims in *Diehr* are not analogous to Appellants’ claims.

The claims in *DDR* addressed an Internet-unique problem of retaining website visitors by modifying the conventional technological solution by generating and directing users to a dual-source integrated hybrid web page. *DDR*, 773 F.3d at 1257–59 (cautioning “that not all claims purporting to address Internet-centric challenges are eligible for patent” (p. 1258)). By contrast, the focus of Appellants’ claims is on a traditional process—using third-party services to execute transactions between parties—that existed long before computers or the Internet. *See Alice*, 134 S Ct. at 2356 (“The use of a third-party intermediary (or ‘clearing house’) is . . . a building block of the modern economy.”) (citing Yadav, *The Problematic Case of*

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<sup>6</sup> *Diamond v. Diehr*, 450 U.S. 175, 177, 178 (1981).

<sup>7</sup> *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014).

*Clearinghouses in Complex Markets*, 101 Geo. L.J. 387, 406–12 (2013); J. Hull, *Risk Management and Financial Institutions* 103–04 (3d ed. 2012)).

Although the claims recite various computing elements, these merely amount to the generic and conventional implementation over the Internet, providing more efficient implementation of the aforementioned traditional process. *See Bascom Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1351 (Fed. Cir. 2016) (distinguishing the patent-eligible claims at issue from those in *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362 (Fed. Cir. 2015), because the invention in *OIP* was simply the generic automation of a traditional price-optimization technique); *CLS Bank Int’l v. Alice Corp. Pty. Ltd.*, 717 F.3d 1269, 1286 (Fed. Cir. 2013) (en banc) *aff’d*, 134 S. Ct. at 2347 (“simply appending generic computer functionality to lend speed or efficiency to the performance of an otherwise abstract concept does not meaningfully limit claim scope for purposes of patent eligibility”). We note Appellants’ Specification describes concepts such as incorporating a service’s application program interface (API) into a merchant’s website—which may exhibit similarities to the claims in *DDR*—but Appellants have not incorporated such subject matter into the claims. *See, e.g.* Spec. ¶ 16, Fig. 2, item 204.

In sum, for the reasons stated above, we agree with the Examiner that claim 1 is directed to an abstract idea. For the same reasons, we also agree with the Examiner that independent claims 11 and 21, which recite elements similar to claim 1, and dependent claims 2–10 and 12–20, for which Appellants offer no arguments separate from those for claim 1, are directed to an abstract idea.

*Alice Step Two*

In the second step, “we 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.” *Alice*, 134 S. Ct. at 2355 (quoting *Mayo*, 566 U.S. at 78, 79) (brackets omitted) (describing this step “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’” (quoting *Mayo*, 566 U.S. at 72–73)). We also agree with the Examiner that the claims do not recite significantly more than an abstract idea.

The claims recite additional elements—“web page,” “network,” “server,” “interface,” “web site,” “redirection,” “machine readable medium,” “machine,” and “one or more computer processors,”<sup>8</sup> but the Examiner finds, and we agree, these elements are nothing more than generic and known computing elements or functionalities. *See* Non-Final Act. 3, 6; Ans. 9. Consistent with this finding, the Specification discloses that “a generally conventional computer server . . . is suitable for use in connection with practicing the embodiments of the present invention.” Spec. ¶ 25.<sup>9</sup> The Specification further describes the use of “existing network infrastructure” to implement their invention. *Id.* ¶ 4. As is the case here, “the use of generic

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<sup>8</sup> Each of the pending claims recites “web page,” “network,” “server,” “web site,” and “redirection,” whereas claims 11–20 additionally recite “machine readable medium” and “machine,” and claim 21 additionally recites “one or more computer processors.”

<sup>9</sup> *See also id.* ¶ 26 (describing computer server 400 “as is generally well known to those skilled in the art”), Fig. 4 (showing conventional computer server 400).

computer elements like a microprocessor or user interface do not alone transform an otherwise abstract idea into patent-eligible subject matter.” *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1096 (Fed. Cir. 2016) (citing *DDR*, 773 F.3d at 1256).

Claim limitations such as “redirection,”<sup>10</sup> “webpage,” “website,” and “network” are well-known, routine terms of art related to the Internet and simply “limit the use of the abstract idea to a particular technological environment,” which “does not transform an otherwise abstract idea into patent-eligible subject matter.” *Ultramerical, Inc. v. Hulu, LLC*, 772 F.3d 709, 716 (Fed. Cir. 2014) (quoting *Alice*, 134 S. Ct. at 2358); *see also Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1370–71 (Fed. Cir. 2015).

Appellants argue the claims recite significantly more than an abstract idea because they recite specific steps at a low level of generality. App. Br. 19–21; Reply Br. 3. But Appellants’ arguments do little more than highlight certain claim language (e.g., the “specially configured” computer processor of claim 21) without any persuasive explanation as to *why* these

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<sup>10</sup> The concept of “redirection,” as claimed, is simply the exchange and use of reciprocal links between website owners—a common technique known since the early days of the World Wide Web. *See, e.g.*, US Patent 7,818,399 B1, 1:35–38 (iss. Oct. 19, 2010) (“In the early stages, website programmers increased visitor traffic by placing ‘links’ within their websites to other websites, usually related in content or function in exchange for a reciprocal link.”); *see also* US Patent 7,082,470 B1, 1:50–53, 63–64 (iss. July 25, 2006) (“The Owners or managers of websites (Webmasters) all share a common interest: increased user traffic to their websites. A common way this is promoted among Webmasters is their mutual agreement to include links to each other’s websites. . . . When two Webmasters agree to mutual links, these are often referred to as reciprocal links, because of their reciprocal agreement.”).



elements amount to significantly more. Further, merely reciting that a computer processor is “specially configured” does not render otherwise ineligible abstract ideas patent eligible. “Steps that do nothing more than spell out what it means to ‘apply it on a computer’ cannot confer patent-eligibility.” *Intellectual Ventures I*, 792 F.3d at 1370–71 (quoting *Alice*, 134 S. Ct. at 2359 (warning against a § 101 analysis that turns on the draftsman’s art)); *see also Parker v. Flook*, 437 U.S. 584, 593 (1978).

Appellants further argue the Examiner failed to consider properly all additional elements as an ordered combination. We disagree. The Examiner explicitly addresses the claimed invention as an ordered combination in stating that “[t]aken *as a combination*, the elements add nothing more than what is present when the elements are considered individually” and that “claims 1-21, *as a whole*, do not amount to significantly more than the abstract idea itself.” Ans. 8–9 (emphasis added); *see also* Non-Final Act. 3, 5–6. Indeed, considering each of the claims as an ordered combination adds nothing because it follows from the underlying idea of facilitating payments for goods and services via a third-party service. *Mayo*, 566 U.S. at 79–80.

Thus, Appellants have not presented, nor do we find, any persuasive evidence to support the assertion that the additional elements recited in independent claim 1 amount to significantly more than an abstract idea. For the same reasons, Appellants have not persuaded us that independent claims 11 and 21, and dependent claims 2–10 and 12–20, recite significantly more than an abstract idea.

Appellants additionally argue “the pending claims recite a specific implementation *involving* the alleged abstract idea, which does not impermissibly preempt all research or development related to the alleged

abstract idea.” App. Br. 9. Appellants explain that “while the claims . . . may be related generally to the alleged abstract idea of performing a money transfer, . . . this general idea is not what would be preempted by granting a patent [in] this case. Instead, what would be preempted is a specific set of operations” as set forth by the recited claim language. App. Br. 16 (quotations and emphasis omitted).

This argument is unpersuasive. “[T]he absence of complete preemption does not demonstrate patent eligibility.” *FairWarning*, 839 F.3d at 1098 (quoting *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015)). Accordingly, even if Appellants’ claims do not preempt all possible methods of performing money transfers or facilitating payment of goods and services corresponding to purchases, this “do[es] not make them any less abstract.” *OIP*, 788 F.3d at 1362–63. Moreover, “[w]here a patent’s claims are deemed only to disclose patent ineligible subject matter under the *Mayo* framework, as they are in this case, preemption concerns are fully addressed and made moot.” *Ariosa*, 788 F.3d at 1379.

Accordingly, having considered the Examiner’s rejection in light of each of Appellants’ arguments and the evidence of record, we agree with the Examiner that claims 1–21 are directed to patent-ineligible subject matter under 35 U.S.C. § 101, and we sustain this rejection.

*Rejection under 35 U.S.C. § 103(a)*

In rejecting claim 1 under 35 U.S.C. § 103(a), the Examiner relies on the combination of Agrawal, Bartoli, and Armes. Non-Final Act. 6–8 (citing Agrawal ¶¶ 13, 67, 171, 173; Bartoli 5:47–52, 25:22–24; Armes ¶ 61). The Examiner finds, *inter alia*, Agrawal teaches “the first merchant web site to

which a consumer user is redirected to by the payment server” because Agrawal discloses a network-based online payment service in which, during a payment transaction process, a visitor’s browser may be redirected from a payment service provider’s web site to a “thank you” URL or page on the payee’s external website. Non-Final Act. 6–7 (citing Agrawal ¶¶ 13, 171, 173), *see also* Agrawal Fig. 21, item 8, Fig. 22, item 9, ¶ 57 (describing the pay page “owner” as the “payee”). The Examiner also finds that although “Agrawal in view of Bartoli does not show that responsive to the redirection, executing a transaction between the consumer user and the merchant,” Armes teaches “responsive to the redirection, completing a purchase transaction between the consumer user and the merchant.” Non-Final Act. 7 (citing Armes ¶ 61). In particular, the Examiner identifies Armes’s disclosure of redirecting the consumer to an account administrator for the purpose of authenticating certain consumer information, after which the transaction is completed. *See* Armes ¶ 61 (discussing redirection to the administrator for “facilitating consumer purchases”).

Appellants argue “the alleged redirection shown in *Armes* does not have anything to do with executing a transaction *between a consumer user and a merchant* (as claimed) but relates only to an authorization and the provision of a payment number to blind a value source.” App. Br. 23 (discussing Armes ¶ 61). Appellants further assert that “*Armes* distinguishes between authentication and effecting payment” and “[t]o the extent any consumer in *Armes* is ‘redirected,’ this is for *authentication* purposes[,] not to complete a purchase transaction.” *Id.* at 24.

In response, the Examiner explains “[w]hile the redirection takes the consumer to the account administrator, the redirection nevertheless results

[in] the completion of the purchase. Armes, thus, teaches completing the purchase between the consumer and the merchant responsive to redirection.”  
Ans. 10. We agree with the Examiner.

In response, Appellants contend that “directing a user to an account administrator means there is a problem, that in fact a transaction has not been enabled and is now problematic. This is completely opposite to what is claimed. A user is not directed to an account administrator. As claimed, the redirection *enables* the cited functionality,” i.e., “**execution** of a transaction.” Reply Br. 6.

Appellants’ arguments are unpersuasive because they are not commensurate with the scope of the claim. Claim 1 recites method steps using the open-ended transition term “comprising,” which does not preclude steps in addition to those recited. *See Genentech, Inc. v. Chiron Corp.*, 112 F.3d 495, 501 (Fed. Cir. 1997) (citation omitted) (“‘Comprising’ is a term of art used in claim language which means that the named elements are essential, but other elements may be added and still form a construct within the scope of the claim.”).<sup>11</sup> Neither the plain language of claim 1 nor the Specification limits the steps involved in “completing” a transaction by precluding additional steps that can be associated with (or responsive to) the redirection. Rather, consistent with the plain language of claim 1, the Specification describes embodiments in which, responsive to the redirection, additional steps (e.g., consumer authorization) are performed prior to completing the purchase. *See, e.g.*, Spec. ¶¶ 22–23. For example, the Specification discloses “the CGI command redirects the browser back to the

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<sup>11</sup> *See also Gillette Co. v. Energizer Holdings Inc.*, 405 F.3d 1367, 1371 (Fed. Cir. 2005); MPEP § 2111.03 (9th ed. Rev. 08.2017, Jan. 2018).

merchant's web server to merchant page 2, which begins the augmented check out flow. *In conjunction with this*, a reply is passed to the server . . . that indicates whether or not the consumer is authorized to use the payment service.” Spec. ¶ 22 (emphasis added).

Thus, claim 1 does not preclude an additional step such as sending the consumer to the account administrator for authentication purposes as part of enabling and completing the purchase. Accordingly, we agree with the Examiner that claim 1's “responsive to the redirection, completing a purchase transaction between the consumer user and the merchant” limitation encompasses Armes's disclosure of completing the purchase transaction “indirectly” (i.e., completing it responsive to the redirection, albeit involving an indirect action as part of the completion).

Accordingly, Appellants do not persuade us the Examiner errs in rejecting independent claim 1 under 35 U.S.C. § 103(a), and we sustain its rejection. We also, therefore, sustain the § 103(a) rejection of independent claims 11 and 21, which recite similar requirements, and claims 2–10 and 12–20, which depend from claims 1 or 11, for which Appellants present no substantive arguments separate from those for claim 1.

#### DECISION

We affirm the Examiner's decision rejecting claims 1–21 under 35 U.S.C. §§ 101 and 103(a).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1). *See* 37 C.F.R. § 1.136(a)(1)(iv)(2016).

AFFIRMED