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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* ORACLE OTC SUBSIDIARY LLC<sup>1</sup>

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Appeal 2017-000689  
Application 13/961,614  
Technology Center 3600

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Before ANTON W. FETTING, BRUCE T. WIEDER, and  
ALYSSA A. FINAMORE, *Administrative Patent Judges*.  
FETTING, *Administrative Patent Judge*.

DECISION ON APPEAL

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<sup>1</sup> James Neal Richter is listed as the inventor.

STATEMENT OF THE CASE<sup>2</sup>

Oracle OTC Subsidiary LLC (Appellant) seeks review under 35 U.S.C. § 134 of a final rejection of claims 1–18, the only claims pending in the application on appeal. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

The Appellant invented a way of tracking and storing sales data for performance prediction. Specification para. 1.

An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below (bracketed matter and some paragraphing added).

1. A method comprising:

[1] using real sales data to build, using a computer system,  
a learned model of a strategy-pipeline,  
wherein the learned model is built using machine  
learning;

[2] receiving, at the computer system,  
an ideal model of the strategy-pipeline;

[3] assigning a weight to the learned model, using the computer  
system,  
based on a comparison of the learned model and a sales  
transaction;

[4] assigning a weight to the idealized model, using the  
computer system,

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<sup>2</sup> Our decision will make reference to the Appellant’s Appeal Brief (“App. Br.,” filed April 25, 2016) and Reply Brief (“Reply Br.,” filed October 12, 2016), and the Examiner’s Answer (“Ans.,” mailed August 17, 2016), and Final Action (“Final Act.,” mailed November 23, 2015).

based on a comparison of the ideal model and the sales transaction;

[5] generating an aggregate model

based on the idealized model, the learned model, and the assigned weights;

and

[6] predicting pipeline throughput

for at least one person or group of persons

based on the aggregate model.

Claims 1–18 stand rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter.

## ISSUES

The issues of eligible subject matter turn primarily on whether the claims recite more than abstract conceptual advice of what a computer is to provide without implementation details.

## ANALYSIS

Method claim 1 recites building a model using machine learning, receiving an ideal model, assigning weights to the models, generating an aggregate model, and predicting sales pipeline throughput. Thus, claim 1 recites receiving, analyzing, and creating modeling data. None of the limitations recite implementation details for any of these steps, but instead recite functional results to be achieved by any and all possible means. Data reception, analysis and modification, and forecasting are all generic, conventional data processing operations to the point they are themselves

concepts awaiting implementation details. The sequence of data reception-analysis-forecast is equally generic and conventional. The ordering of the steps is therefore ordinary and conventional. The remaining claims merely describe forecasting parameters, with no implementation details.

### 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 Int’l*, 134 S. Ct. 2347, 2355 (2014)

(citations omitted) (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66 (2012)).

To perform this test, we must first determine whether the claims at issue are directed to a patent-ineligible concept. The Examiner determines the claims directed to “predicting (sales) throughput for a (sales) pipeline for a sales person or group of sales person[s] comprising wholly generic computers.” Final Act. 7.

Although the Court in *Alice* made a determination as to what the claims are 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 1 does not recite what it is directed to, but the steps in claim 1 result in predicting sales pipeline throughput. The Specification at paragraph 1 describes the invention as relating to tracking and storing sales data for performance prediction. Thus, all this evidence shows that claim 1 is directed to predicting sales data, i.e. financial forecasting. This is consistent with the Examiner’s determination.

It follows from prior Supreme Court cases, and *Bilski* (*Bilski v Kappos*, 561 U.S. 593 (2010)) in particular, that the claims at issue here are directed to an abstract idea. Like the risk hedging in *Bilski*, the concept of financial forecasting is a fundamental economic practice long prevalent in our system of commerce. The use of financial forecasting is also a building block of ingenuity in sales management. Thus, financial forecasting, 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 financial forecasting at issue here. Both are squarely within the realm of “abstract ideas” as the Court has used that term. *See id.* at 2357.

Further, claims involving data collection, analysis, and display are directed to an abstract idea. *Elec. Power Grp., LLC 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 607, 611 (Fed. Cir. 2016); *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093–94 (Fed. Cir. 2016). Claim 1, unlike the claims found non-abstract in prior cases, uses generic computer technology to perform data retrieval, analysis, and forecasting 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) (determining claims not abstract because they “focused on a specific asserted improvement in computer animation”). As such, claim 1 is directed to the abstract idea of receiving, analyzing, and forecasting data, much as was done with paper, pencil and adding machines prior to computers.

The remaining claims merely describe forecasting parameters. 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.

[T]he 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 “implemen[t]” an abstract idea “on ... a computer,” that addition cannot impart patent eligibility. This conclusion accords with the pre-emption concern that undergirds our § 101 jurisprudence. Given the ubiquity of computers, wholly generic computer implementation is not generally the sort of “additional featur[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.” *Id.* 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 receive, analyze, generate, and forecast data amounts to electronic data query and retrieval—one of the most basic functions of a computer. The limitation of “wherein the learned model is built using machine learning” is not a step, but a recitation of what should be used to build a model, *viz.* machine learning, which is prescriptive rather than

descriptive, as no particular implementation of machine learning is recited. All of these computer functions are well-understood, routine, conventional activities previously known to the industry. *See Elec. Power Grp., LLC v. Alstom S.A., supra.* Also see *In re Katz Interactive Call Processing Patent Litig.*, 639 F.3d 1303, 1316 (Fed.Cir. 2011) (“Absent a possible narrower construction of the terms ‘processing,’ ‘receiving,’ and ‘storing,’ . . . those functions can be achieved by any general purpose computer without special programming.”). In short, each step does no more than require a generic computer to perform generic computer functions. As to the data operated upon, “even if a process of collecting and analyzing information is ‘limited to particular content’ or a particular ‘source,’ that limitation does not make the collection and analysis other than abstract.” *SAP Am. Inc. v. InvestPic LLC*, 890 F.3d 1016, 1022 (Fed. Cir. 2018).

Considered as an ordered combination, the computer components of Appellant’s method add nothing that is not already present when the steps are considered separately. The sequence of data reception-analysis-forecast is equally generic and conventional or otherwise held to be abstract. *See Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014) (holding that the sequence of receiving, selecting, offering for exchange, display, allowing access, and receiving payment recited an abstraction), *Inventor Holdings, LLC v. Bed Bath & Beyond, Inc.*, 876 F.3d 1372, 1378 (Fed. Cir. 2017) (sequence of data retrieval, analysis, modification, generation, display, and transmission), *Two-Way Media Ltd. v. Comcast Cable Commc’ns, LLC*, 874 F.3d 1329, 1339 (Fed. Cir. 2017) (sequence of processing, routing, controlling, and monitoring). The ordering of the steps is therefore ordinary and conventional.

Viewed as a whole, Appellant’s method claims simply recite the concept of financial forecasting as performed by a generic computer. To be sure, the claims recite doing so by advising one to forecast sales using two weighted models where one of the models is built using some unspecified form of machine learning. But this is no more than abstract conceptual advice on the parameters for such financial forecasting 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 Specification spells out different generic equipment and parameters that might be applied using this concept and the particular steps such conventional processing would entail based on the concept of financial forecasting under different scenarios. It does 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 financial forecasting 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.*, 134 S. Ct. 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.*, 134 S. Ct. at 2360.

We adopt the Examiner’s determinations from Final Action 5–9 and Answer 2–12 and reach similar legal conclusions. We now respond to the Reply Brief arguments.

We are not persuaded by Appellant’s argument that the claims recite significantly more than the alleged abstract idea. Reply Br. 2–3. Appellant initially recites various claim limitations and alleges each is significantly more. This contention is conclusory and, so, unpersuasive. Appellant then contends that performing machine learning, by definition, simply cannot be performed in the human mind or via pen and paper. Perhaps so, but what the machine learning actually is recited as doing, *viz.* building a model, can be performed in the human mind or via pen and paper. The claims recite no particular implementation for machine learning nor how machine learning accomplishes model construction. As such, the recitation of using machine learning is abstract conceptual advice to use generic equipment to perform its known function. “When claims like the Asserted Claims are directed to an abstract idea and merely require generic computer implementation, they do not move into section 101 eligibility territory.” *Smart Sys. Innovations, LLC v. Chicago Transit Auth.*, 873 F.3d 1364, 1374 (2017) (citations and internal quotations omitted).

Appellant’s reliance on *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016) and *Bascom Global Internet v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016) are unhelpful. Reply Br. 3.

The claims differ from those found patent eligible in *Enfish*, where the claims were “specifically directed to a *self-referential* table for a computer database.” *Id.* at 1337. The claims thus were “directed to a specific improvement to the way computers operate” rather than an abstract idea implemented on a computer. *Id.* at 1336. Here, by contrast, the claims are not directed to an improvement in the way computers operate. Though the claims purport to accelerate and make more accurate the process of forecasting sales, our reviewing court has held that speed and accuracy increases stemming from the ordinary capabilities of a general purpose computer “do[] not materially alter the patent eligibility of the claimed subject matter.” *Bancorp Servs., L.L.C. v. Sun Life Assurance Co. of Can. (U.S.)*, 687 F.3d 1266, 1278 (Fed. Cir. 2012). Instead, the claims are more analogous to those in *FairWarning*, 839 F.3d 1089 (Fed. Cir. 2016), wherein claims reciting “a few possible rules to analyze the audit log data” were found directed to an abstract idea because they asked “the same questions (though perhaps phrased with different words) that humans in analogous situations detecting fraud have asked for decades.” *Id.* at 1095.

As to *Bascom*, that decision was in the posture of deciding an appeal from the grant of a (12)(b)(6) motion of failure to state a claim for which relief may be granted, in which all factual questions had to be decided in the non-movant’s favor. Appellant does not show sufficient facts that the manner the claimed invention is organized is inventive. In fact, Appellant does not even rely on *Bascom* to support the claims, but only for the unsurprising holding that failure to include special computers is not a

requirement for patent eligibility under § 101. The analysis is far more complex and is laid out *supra*.

Appellant returns to *Bascom* later at Reply Brief 4, contending that the claims “recite a specific, discrete implementation of the abstract idea.” *Id.* (citing *Bascom*, 827 F.3d at 1350). But as we determined *supra*, the claims recite no technological implementation, but only a series of advisory results to be achieved using conventional computer operations.

We are not persuaded by Appellant’s argument that the claims do not preempt the alleged abstract idea. Reply Br. 3–5. “Where a patent’s claims are deemed only to disclose patent ineligible subject matter under the *Mayo* [*Alice*] framework, as they are in this case, preemption concerns are fully addressed and made moot.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015).

Appellant goes on to contend the claims are a novel invention that utilizes steps in a specific ordered way utilizing specific information to better predict throughput of sales persons and manage a sales force including allocating sales territories and sales quotas, which is not the type of basic tool of scientific and technological work described in *Mayo*, *Myriad*, or *Flook*.

As to novelty, “a claim for a *new* abstract idea is still an abstract idea. The search for a § 101 inventive concept is thus distinct from demonstrating § 102 novelty.” *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (Fed. Cir. 2016). As to specificity, the claims offer this only in the sense that they specify the limitations using words. The steps the words describe are generic computer procedures.

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We are not persuaded by Appellant's argument that there has been no prima facie showing. Reply Br. 5. The Examiner presented a prima facie showing at Final Action 7–9.

#### CONCLUSIONS OF LAW

The rejection of claims 1–18 under 35 U.S.C. § 101 as directed to non-statutory subject matter is proper.

#### DECISION

The rejection of claims 1–18 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