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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* SIAMAK SARTIPI <sup>1</sup>

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Appeal 2017-001527  
Application 12/572,687  
Technology Center 3600

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Before THU A. DANG, JAMES R. HUGHES, and  
NORMAN H. BEAMER, *Administrative Patent Judges*.

HUGHES, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134(a) of the Examiner’s decision rejecting claims 1, 2, 4–11, and 13–26. Claims 3 and 12 have been canceled. Final Act. 1–2; App. Br. 6.<sup>2</sup> We have jurisdiction under 35 U.S.C. § 6(b).

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<sup>1</sup> According to Appellant, the real party in interest is BlackBerry Limited. App. Br. 3.

<sup>2</sup> We refer to Appellant’s Specification (“Spec.”) filed Oct. 2, 2009 (claiming benefit of US 61/117,516, filed Nov. 24, 2008); Appeal Brief (“App. Br.”) filed Apr. 1, 2016; and Reply Brief (“Reply Br.”) filed Nov. 8, 2016. We also refer to the Examiner’s Final Office Action (Final Rejection) (“Final Act.”) mailed Nov. 2, 2015, and Answer (“Ans.”) mailed Sept. 8, 2016.

We affirm.

*Appellant's Invention*

The invention generally relates to “electronic payment systems and, more particularly, to the use of a mobile wireless communications device to facilitate an electronic payment at a point-of-sale” (Spec. ¶ 2). More specifically, the invention relates to servers (apparatuses), systems, and methods of an electronic payment system transferring funds from a purchaser account to a merchant account. The payment process (method) transfers data to a server (a purchaser transaction identification and purchaser account access information from a mobile device and a merchant transaction identification and transaction information from a point-of-sale device), matches the identification data, sends the transaction information to the mobile device, confirms receipt (receives a confirmation) of the transaction information from the mobile device, and transfers funds from the purchaser’s account to the merchant’s account (based on the confirmation and the purchaser account access information). Spec. ¶¶ 19–30, 32; Abstract.

*Representative Claim*

Independent claim 21, reproduced below, further illustrates the invention:

21. A method of operating a payment processing server to transfer funds from a purchaser account to a merchant account, the method comprising:

receiving a purchaser transaction identification (ID) and purchaser account access information from a mobile wireless communications device comprising a device processor and memory coupled thereto;

receiving, at a point-of-sale service provider server, a merchant transaction ID and transaction information from a point-of-sale device;

sending the transaction information to the mobile wireless communications device when the merchant transaction ID matches the purchaser transaction ID;

receiving confirmation of the transaction information from the mobile wireless communications device; and

effecting a transfer of funds from the purchaser account to the merchant account based upon the confirmation of the transaction information and the purchaser account access information.

### *Rejection on Appeal*

The Examiner rejects claims 1, 2, 4–11, and 13–26 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter.

### ISSUE

Based upon our review of the record, Appellant’s contentions, and the Examiner’s findings and conclusions, the issue before us follows:

Did the Examiner err in finding Appellant’s claims were directed to patent ineligible subject matter under 35 U.S.C. § 101?

### ANALYSIS

Appellant argues independent claims 1, 11, 15, and 21 (as well as dependent claims 2, 4–10, 13, 14, 16–20, and 22–26) together as a group with respect to the § 101 rejection. *See* App. Br. 6–13. We select independent claim 21 as representative of Appellant’s arguments with respect to claims 1, 2, 4–11, and 13–26. 37 C.F.R. § 41.37(c)(1)(iv).

The Examiner rejects the claims as being directed to patent-ineligible subject matter in that “the claimed invention is directed to a judicial

exception (. . . an abstract idea) without significantly more”—specifically, “the abstract idea of a series of steps instructing how to transfer funds which is a fundamental economic practice.” Final Act. 9. Appellant contends that: (1) the Examiner has not presented a *prima facie* case of unpatentability under §101 (App. Br. 6–9); (2) the abstract idea identified by the Examiner is not an accurate characterization of Appellant’s invention (App. Br. 9–11); (3) the claimed invention is not directed to an abstract concept, “is ‘necessarily rooted in computer technology’” (App. Br. 11), and the claims do not monopolize or preempt the purported abstract idea because the claims amount to “‘significantly more’ than the abstract idea alone” (App. Br. 12). See App. Br. 6–13; Reply Br. 2–6.

Under 35 U.S.C. § 101, a patent may be obtained for “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.” The Supreme Court has “long held that this provision contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014) (quoting *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)).

The Supreme Court, in *Alice*, reiterated the two-step framework previously set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66, 77–80 (2012), “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice*, 134 S. Ct. at 2355. Assuming that a claim nominally falls within one of the statutory categories of machine, manufacture, process, or composition of matter, the first step in the analysis is to “determine whether the claims at issue are

directed to one of those patent-ineligible concepts” (*id.*), e.g., to an abstract idea. For example, abstract ideas include, but are not limited to, fundamental economic practices, methods of organizing human activities, an idea of itself, and mathematical formulas or relationships. *Id.* at 2355–57. If the claims are not directed to an abstract idea, the inquiry ends. Otherwise, the inquiry proceeds to the second step where the elements of the claims are considered “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). This second step is described as “a search for an “‘inventive concept’”—*i.e.*, an element or combination of elements that is ‘. . . significantly more than . . . the [ineligible concept] itself.’” *Id.* at 2355 (alteration in original) (quoting *Mayo*, 566 U.S. at 72–73).

The Court acknowledged in *Mayo*, that “all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.” *Mayo*, 566 U.S. at 71. We, therefore, look to whether the claims focus on a specific means or method that improves the relevant technology or are instead directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery. *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1336 (Fed. Cir. 2016).

#### *Alice Step 1 Analysis*

Turning to the first step of the eligibility analysis, “the first step in the *Alice* inquiry . . . asks whether the focus of the claims is on the specific asserted improvement in computer capabilities . . . or, instead, on a process that qualifies as an ‘abstract idea’ for which computers are invoked merely as a tool.” *Enfish*, 822 F.3d at 1335–36. “The abstract idea exception

prevents patenting a result where ‘it matters not by what process or machinery the result is accomplished.’” *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1312 (Fed. Cir. 2016) (quoting *O’Reilly v. Morse*, 56 U.S. (15 How.) 62, 113 (1853)). “We therefore look to whether the claims . . . focus on a specific means or method that improves the relevant technology or are instead directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery.” *McRO*, 837 F.3d at 1314.

The Examiner finds independent claims 1, 11, 15, and 21 are directed to the abstract idea of “transfer[ing] funds which is a fundamental economic practice.” Final Act. 9. The Examiner further finds the claims describe “contractual relations” (similar to *buySAFE*) (*see* Ans. 6–7), financial transactions like hedging (similar to *Bilski*), and mitigating risk (similar to *Alice Corp.*) that are also “fundamental economic practices.” *See* Ans. 7 (referencing *Alice Corp.*, 134 S. Ct. 2347, 2356–57 (2014); *Bilski v. Kappos*, 561 U.S. 593, 611 (2010); and *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1353–54 (Fed. Cir. 2014)). Conversely, the Appellant attacks the Examiner’s findings as being an inaccurate characterization and lacking evidentiary support—that is, the Examiner fails to present evidence that the claims are directed to an abstract idea such as a fundamental economic practice and, thus, the Examiner's reasoning and analysis do not include sufficient substance to rise to the level of a prima facie showing. *See* App. Br. 6–11. Appellant also contends the claims are not directed to an abstract idea. *See* App. Br. 11–12; Reply Br. 2–6. We agree with the Examiner that Appellant’s claim 21 (and the other pending claims) are directed to patent-ineligible abstract ideas or concepts.

With respect to Appellant’s prima facie case and evidentiary contentions, Appellant misconstrues the relevant law and precedent. 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)). Therefore, 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) (internal quotations omitted). Thus, a prima facie rejection need only set forth the statutory basis of the rejection in a sufficiently articulate and informative manner as to meet the notice requirement of § 132. *Id.*

Here, in rejecting claims 1, 2, 4–11, and 13–26 under 35 U.S.C. § 101, the Examiner analyzed the claims using the *Mayo/Alice* two-step framework, consistent with the guidance set forth in the USPTO’s “2014 Interim Guidance on Patent Subject Matter Eligibility,” 79 Fed. Reg. 74618 (Dec. 16, 2014), in effect at the time the rejection was made, i.e., on Nov. 2, 2015. The Examiner notified Appellant of the reasons for the rejection “together with such information and references as may be useful in judging of the propriety of continuing the prosecution of [the] application.” 35 U.S.C. § 132. *See* Final Act. 2–9. And, contrary to Appellant’s assertions, in doing so, the Examiner set forth a prima facie case of unpatentability such that the

burden shifted to Appellant to demonstrate that the claims are patent-eligible.

Appellant ostensibly argues that evidentiary support is required to establish a *prima facie* case of patent-ineligibility. *See* App. Br. 7–8 (citing various non-precedential Board decisions). We, however, are aware of no controlling precedent that requires the Office to provide factual evidence to support a finding that a claim is directed to an abstract idea. Although it may be useful in some circumstances to compare the claims at issue with those in earlier cases in which a similar issue of patent-eligibility has been decided, such a comparison, contrary to Appellant’s suggestion (App. Br. 7–9), is not required for a *prima facie* showing, nor is it mandated by “proper” examination procedure (*id.*).

With respect to Appellant’s characterization contentions, claim 21 delineates a method that: transfers data to a server (a purchaser transaction identification (ID) and purchaser account access information from a mobile device, as well as a merchant transaction ID and transaction information from a point-of-sale device); determines if the identification data matches and, if so, sends the transaction information to the mobile device; confirms the mobile device receives the transaction information by receiving confirmation of the transaction information from the mobile device; and transfers funds from the purchaser’s account to the merchant’s account based on the confirmation and the purchaser account access information. In sum, as the Examiner finds, claim 21 is directed to “a series of steps instructing how to transfer funds,” which “is a fundamental economic practice,” i.e., an abstract idea. Final Act. 9. Although we could characterize claim 21 with more detail, for example, as being directed to

communicating and manipulating or comparing data to effect a transfer of funds, this does not change the patent-eligibility analysis. *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1240–41 (Fed. Cir. 2016) (“An abstract idea can generally be described at different levels of abstraction. . . . The Board’s slight revision of its abstract idea analysis does not impact the patentability analysis.”).

Utilizing the above-identified characterization, we analyze whether claim 21 is directed to an abstract idea. Instead of using a fixed definition of an abstract idea and analyzing how claims fit (or do not fit) within the definition, “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)). 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 Texas, LLC v. DirecTV, LLC*, 838 F.3d 1253, 1257 (Fed. Cir. 2016).

Here, Appellant’s claims generally, and independent claim 21 in particular, relate to collecting and communicating information and analyzing/manipulating information to effect a transfer of funds (see discussion *supra*). That is, Appellant’s claims relate to collecting, analyzing, manipulating, and communicating data utilizing un-recited processes or algorithms to provide/effect a result (transfer of funds corresponding to a transaction). Therefore, the claims broadly recite collecting, analyzing, manipulating, and transferring information (data)

relating to financial transactions. *See* Abstract; Spec. ¶¶ 19–30. This is consistent with how Appellant describes the claimed invention. *See* App. Br. 5 (citing Spec. ¶¶ 19, 20, 22, 26, 27, 29, 36, 37, 40, 41, 44, and 46). Contrary to Appellant’s assertions (*see* App. Br. 11–12; Reply Br. 2–6), the present claims are directed to an abstract idea, in that the instant claims are analogous to a number of cases in which courts have identified similar claims as encompassing abstract ideas.

Our reviewing court has held that abstract ideas include gathering, analyzing, and manipulating information. *Elec. Power*, 830 F.3d at 1354 (finding claims directed to a “combination of . . . abstract-idea processes. . . . of gathering and analyzing information” to be abstract). Similarly, our reviewing court has held that abstract ideas include gathering, analyzing, and storing information. *See Two-Way Media Ltd. v. Comcast Cable Commc’ns, LLC*, 874 F.3d 1329, 1337–38 (Fed. Cir. 2017) (finding claims directed to the functional results of accumulating, converting, and monitoring records manipulate data “but fail[] to do so in a non-abstract way” (*id.* at 1338)); *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat’l Ass’n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014) (finding the “claims generally recite . . . extracting data . . . [and] recognizing specific information from the extracted data” (*id.* at 1345) and that the “claims are drawn to the basic concept of data recognition” (*id.* at 1347)).

The Federal Circuit, as discussed by the Examiner (*see* Final Act. 9; Ans. 6–7), has also held that abstract ideas include financial transactions or other “fundamental economic practices” (Ans. 7). *Credit Acceptance Corp. v. Westlake Servs.*, 859 F.3d 1044, 1049–51 (Fed. Cir. 2017) (the claims are “directed to the abstract idea of processing an application for financing a

purchase” (*id.* at 1054), which is “a fundamental economic practice long prevalent in our system of commerce” (*id.* (internal quotations omitted)); *Intellectual Ventures I LLC v. Capital One Bank*, 792 F.3d 1363, 1367 (Fed. Cir. 2015) (“[T]he patent claims are directed to an abstract idea: tracking financial transactions” (*id.* at 1367) which amounts to “a fundamental . . . practice long prevalent in our system” (*id.* at 1369–70 (internal quotations omitted))); *buySAFE*, 765 F.3d at 1353–55 (“contractual relations . . . constitute[] a fundamental economic practice long prevalent in our system of commerce” (*id.* at 1354 (internal quotations omitted))).

Here, the collection, analysis, manipulation, and communication of information (data)—in the form of collecting specific data, analyzing that data (the matching and confirmation), and the manipulation of the data and resulting determinations (providing the confirmation and effecting the funds transfer)—are analogous to the abstract ideas of collecting, analyzing, and manipulating information discussed in *Elec. Power*, *Two-Way Media*, and *Content Extraction*. Further, effecting a transfer of funds is analogous to the fundamental economic practices found to be abstract ideas in *Credit Acceptance Corp.*, *Intellectual Ventures I*, and *buySAFE*.

With respect to Appellant’s contention that the claims are not directed to fundamental economic practices, but instead are analogous to data transmission like the claims in *Google Inc. v. Simpleair, Inc.*, CBM2014-00170, January 22, 2015 (Reply Br. 5–6), we previously explained that this decision is not controlling precedent (*supra*). Further, to the extent the claims in *Simpleair* are similar to the instant claims, we find (*supra*) that such data communication is analogous to data communication, gathering, and analysis found to be abstract in *Elec. Power*, 830 F.3d at 1354.

Appellant’s claims can also be distinguished from patent-eligible claims such as those in *Enfish* (directed to “a specific improvement to the way computers operate.” *Enfish*, 822 F.3d at 1336). Appellant’s claims are directed to the results of data analysis and manipulation (the result of effecting a funds transfer) rather than “a particular way of performing” or “inventive technology for performing those functions” or, in other words, “achiev[ing] these results in a non-abstract way.” *Two-Way Media*, 874 F.3d at 1337–38 (internal quotations omitted). In other words, “the focus of the claims is not on such an improvement in computers as tools, but on certain independently abstract ideas that use computers as tools.” *Elec. Power*, 830 F.3d at 1354.

Thus, we agree with the Examiner that the claims are directed to the abstract ideas of collecting, analyzing, and manipulating information utilizing a computer, resulting in a fundamental economic practice. Notably, this characterization is consistent with Appellant’s description of the claimed invention. Spec. ¶¶ 29 (the “mobile wireless communications device 6 may be any device capable of wireless communication”), 30 (the “POS device 9 may be a POS terminal as known to those of skill in the art . . . . Indeed, the use of existing POS terminals 9 may be advantageous”), 32 (the “payment processor server 7 may be a computer”). See Spec. ¶¶ 29–32, 35.

#### *Alice Step 2 Analysis*

Having found Appellant’s claims are directed to an abstract idea under *Alice*’s step 1 analysis, we next address whether the claims add significantly more to the alleged abstract idea. As directed by our reviewing court, we search for an “‘inventive concept’ sufficient to ‘transform the nature of the claim into a patent-eligible application.’” *McRO*, 837 F.3d at 1312 (quoting

*Alice*, 134 S. Ct. at 2355). The implementation of the abstract idea involved must be “more than performance of ‘well-understood, routine, [and] conventional activities previously known to the industry.’” *Content Extraction*, 776 F.3d at 1347–48 (alteration in original) (quoting *Alice*, 134 S. Ct. at 2359). The “inventive concept” “must be significantly more than the abstract idea itself, and cannot simply be an instruction to implement or apply the abstract idea on a computer.” *BASCOM Global Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1349 (Fed. Cir. 2016) (citation omitted).

Here, the Examiner determined that Appellant’s claims do not add significantly more. *See* Final Act. 9; Ans. 15–21. Appellant, on the other hand, contends the claims are directed to significantly more than an abstract idea, *inter alia*, “mobile devices [that] provide a technical advantage by enabling users to replace their physical payment cards with the mobile device itself” (App. Br. 11). Appellant further asserts “the solution provided by the claimed invention, is not abstract; it is ‘necessarily rooted in computer technology’, and was devised to ‘overcome a problem specifically arising in the realm of computer networks’” (App. Br. 11 (quoting *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1257 (Fed. Cir. 2014))). *See* App. Br. 11–12; Reply Br. 8.

Appellant fails to persuade us of error in the Examiner’s rejection with respect to the second *Alice* step. Here Appellant conflates the *Alice* two-part analysis and does not address the Examiner’s findings. To the extent Appellant’s arguments invoke *DDR Holdings* (*see* App. Br. 11–12; Reply Br. 8)—in that the instant claims improve the operation of a computer system (*supra*)—we disagree. In *DDR Holdings*, the court held that a claim

may amount to more than an abstract idea recited in the claims when it addresses and solves problems *only* encountered with computer technology and online transactions, e.g., by providing (serving) a composite web page rather than adhering to the routine, conventional functioning of Internet hyperlink protocol. *See DDR Holdings*, 773 F.3d at 1257–59. In contrast, claim 21 simply transfers and manipulates data using known conventional computers and/or equipment, and effects funds transfers utilizing servers (computers) according to an undisclosed process and/or algorithm. *See supra*; Spec. ¶¶ 29–32, 35. Despite Appellant’s arguments to the contrary (analogizing their claims to those in *DDR*), nothing in the claim recites a “specific improvement to the way computers operate” (*supra*). The communication, analysis, and manipulation of purchaser and merchant information, and the resulting transfer of funds by conventional means, is not a solution to a technical problem as discussed in *DDR Holdings*.

Rather, effecting a funds transfer based on merchant and purchaser information and received data (the confirmation), are all commercial solutions to conventional financial transactions, not a technical solution to a computer or networking problem. Indeed, the claims do not delineate how the mobile device replaces a physical payment, the claims only recite communicating information utilizing conventional methods and equipment. This commercial solution may be assisted using a general purpose computer (servers and mobile devices) to perform the data communication, collection, analysis, and manipulation processes, but does not improve how the computers themselves function. As we previously explained, the instant claims are more akin to the claims for analyzing information found to be abstract in *Elec. Power*, 830 F.3d at 1353.

We agree with the Examiner that the additional limitations, separately, or as an ordered combination, do not provide meaningful limitations (i.e., do not add significantly more) to transform the abstract idea into a patent eligible application. *See e.g.*, Ans. 15–21. The claim merely recites functions (processes) for communicating, analyzing, and manipulating data using known conventional computers and/or equipment to effect conventional funds transfers based on the analyzed and manipulated data. Such steps are all routine and conventional and well-understood computer functions of a general processor. The Specification supports this view (*see supra*) in discussing the processes implemented using known (conventional) mobile devices, networks, POS devices, and generic computers (servers) to perform the recited data communication, manipulation, and funds transfer steps. *See Spec.* ¶¶ 29–32, 35. Such conventional computer and communication processes “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 Holdings*, 773 F.3d at 1256).

For at least the reasons above, we are not persuaded of Examiner error in the rejection of claim 1 under 35 U.S.C. § 101. Thus, we sustain the Examiner’s rejection under § 101 of independent claims 1, 11, 15, and 21, as well as dependent claims 2, 4–10, 13, 14, 16–20, and 22–26, which were not argued separately.

#### CONCLUSION

Appellant has not shown that the Examiner erred in rejecting claims 1, 2, 4–11, and 13–26, under 35 U.S.C. § 101.

Appeal 2017-001527  
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DECISION

We affirm the Examiner's rejection of claims 1, 2, 4–11, and 13–26.

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)(iv).

AFFIRMED