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INNOVATION DIVISION CANTOR FITZGERALD, L.P. 110 EAST 59TH STREET (6TH FLOOR) NEW YORK, NY 10022			SHRESTHA, BIJENDRA K	
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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* HOWARD W. LUTNICK, DEAN P. ALDERUCCI,  
ANDREW FISHKIND, BRIAN L. GAY, KEVIN FOLEY,  
MARK MILLER, and CHARLES PLOTT

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Appeal 2017-001735  
Application 14/263,112  
Technology Center 3600

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Before BIBHU R. MOHANTY, NINA L. MEDLOCK, and  
CYNTHIA L. MURPHY, *Administrative Patent Judges*.

MOHANTY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellants seek our review under 35 U.S.C. § 134(a) of the Examiner's Final Rejection of claims 1–20, which are all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF THE DECISION

We AFFIRM.

## THE INVENTION

The Appellants' claimed invention is directed to trading relating to fund compositions (Spec., page 1, line 1). Claim 1, reproduced below, is representative of the subject matter on appeal.

1. A method comprising:

receiving, by an electronic marketplace, an indication of a composition of an investment fund, in which the composition includes a plurality of financial instruments that the fund targets for ownership and respective percentages of the composition that the fund targets for ownership in each financial instrument;

receiving, by the marketplace, an indication of an order, in which the order defines a side of a trade for a financial instrument;

determining, by the marketplace, that the financial instrument is part of the composition of the fund based on the received indication of the composition;

determining, by the marketplace, a change in price of the financial instrument that includes an increase or decrease in the price of the financial instrument;

based on the determination of the change in price of the financial instrument and the determination that the financial instrument is part of the composition of the fund, transmitting, by the marketplace to an electronic device of the fund, a query asking if an offer to enter into a trade that fulfills at least a portion of the order is accepted;

determining that the offer to enter into the trade is accepted based on a matching order to the order being in an order management system associated with the fund; and

facilitating an execution of the trade without a negotiation about a price of the trade and a quantity of financial instruments in response to the determination that the offer is accepted.

## THE REJECTION

The following rejection is before us for review:

Claims 1–20 are rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

## FINDINGS OF FACT

We have determined that the findings of fact in the Analysis section below are supported at least by a preponderance of the evidence<sup>1</sup>.

## ANALYSIS

### *Rejection under 35 U.S.C. § 101*

The Appellants argue that the rejection of claim 1 is improper because have not been shown to be an abstract idea (App. Br. 6, 7, Reply Br. 2–4). The Appellants also argue that the claim is “significantly more” than the abstract idea and instead rooted in computer technology (App. Br. 7–10, Reply Br. 4–6).

In contrast, the Examiner has determined that the rejection of record is proper (Final Act. 4–6, Ans. 2–16).

We agree with the Examiner. 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, has long interpreted § 101 to include an implicit exception: “laws of nature,

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<sup>1</sup> See *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Patent Office).

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

In judging whether claim 1 falls within the excluded category of abstract ideas, we are guided in our analysis by the Supreme Court’s two-step framework, described in *Mayo* and *Alice*. *Id.* at 2355 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1296–97 (2012)). In accordance with that framework, we first determine whether the claim is “directed to” a patent-ineligible abstract idea. If so, we then consider the elements of the 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 of the abstract idea. *Id.* This is a search for an “inventive concept” an element or combination of elements sufficient to ensure that the claim amounts to “significantly more” than the abstract idea itself. *Id.* The Court also stated that “the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention”. *Id.* at 2358.

Here, we determine that the claim is directed to the concept of performing a financial trade by matching orders. This is a fundamental economic practice long prevalent in our system of commerce, and is an abstract idea beyond the scope of § 101.

We next consider whether additional elements of the claim, both individually and as an ordered combination, transform the nature of the claim into a patent-eligible application of the abstract idea, e.g., whether the claim does more than simply instruct the practitioner to implement the abstract idea using generic computer components. We conclude that it does not. The Specification at pages 11–14 describes the claimed invention using

generic computer components for their known functions in a conventional manner.

Considering each of the claim elements in turn, the function performed by the computer system at each step of the process is purely conventional. Each step of the claimed method does no more than require a generic computer to perform a generic computer function.

For these reasons the rejection of claim 1 is sustained. The Appellants have provided the same arguments for dependent claims 2–19, which are drawn to the same subject matter, and the rejection of these claims is sustained as well.

We reach the same conclusion as to independent apparatus claim 20 and its dependent claims. Here, as in *Alice*, “the system claims are no different in substance from the method claims. 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.” *Alice* 134 S. Ct. at 2351. “[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.” *Id.* at 2358 (quoting *Mayo*, 132 S. Ct. at 1294).

#### CONCLUSIONS OF LAW

We conclude that Appellants have not shown that the Examiner erred in rejecting claims 1–20 under 35 U.S.C. § 101.

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DECISION

The Examiner's rejection of claims 1–20 is sustained.

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). *See* 37 C.F.R. § 41.50(f).

AFFIRMED