UNITED STATES PATENT AND TRADEMARK OFFICE

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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 ODISEAS PAPADIMITRIOU[1]

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Appeal 2017-002116
Application 11/544,859
Technology Center 3600

_____

Before CAROLYN D. THOMAS, MICHAEL J. STRAUSS, and
JON M. JURGOVAN, *Administrative Patent Judges*.

STRAUSS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from a rejection of claims 1–3, 5–12, 14–24, 26–28, 30–32, and 35–38. Claims 4, 13, 25, 29, 33, and 34 are canceled. App. Br. 20–32 (Claims App'x). We have jurisdiction under 35 U.S.C. § 6(b).

We affirm. [2]

THE INVENTION

The claims are directed to regularly identifying and comparing financial products, such as loans and mortgages, and transferring a client from one product to another. Spec. ¶¶ 1, 2. Claim 1, reproduced below, is representative of the claimed subject matter:

> 1. A system for automatically transferring a client from one financial product to another financial product by automatically and on a recurring basis based on real time information obtaining and comparing financial product information, the system comprising:
>
> a first set of one or more servers hosting components that operate when a client actively interacts with the system, including:
>
> a client interface component comprising a web page accessed via the internet; and
>
> a data warehouse component in communication with the client interface component, the data warehouse component stores information; and
>
> a second set of one or more servers in communication with the first set of one or more servers, the second set of one or more servers hosting components that operate both when the client

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[2] We refer to the Specification ("Spec."); filed Oct. 10, 2006; the Final Office Action, mailed May 12, 2015 ("Final Act."); Appeal Brief, filed Mar. 14, 2016 ("App. Br."); the Examiner's Answer, mailed Sept. 22, 2016 ("Ans."). The Reply Brief filed Nov. 22, 2016 is noted but it is not cited herein.

actively interacts with the system and after the client stops
actively interacting with the system, including:

a client data collection component in communication with
the data warehouse component, the client data collection
component collects, downloads, and updates information about
said client from the client directly and from third party sources,
the information being collected, downloaded, and updated in real
time and on a recurring basis independently from client
interaction, the client data collection component further stores
the most up-to-date information in the data warehouse
component; and

a communication component in communication with the
client data collection component, the communication component
communicates on a real-time basis the most up-to-date client
information stored in the data warehouse component to a
decisionmaking component;

the decisionmaking component receives the up-to-date
client information on a real-time basis and, on a recurring basis,
on its own initiation and independently from client interaction,
scans and obtains a plurality of latest financial products on the
market, matches the plurality of the latest financial products with
the most up-to-date client information, and transmits the latest
financial products that matched the most up-to-date client
information to the communication component;

the communication component further transmits the latest
financial products that matched the most up-to-date client
information to a product comparison component;

the product comparison component evaluates and
compares along multiple product terms including two or more of
fees, interest rate, premium amount, expected cost, fixed costs,
switching costs, level of savings, liability coverage, insurance
coverage, periodic payments, expected payments and duration,
on a recurring basis, on its own initiation and independently from
client interaction, a plurality of the latest financial products that
matched the most up-to-date client information received by said
communication component and filters and then transmits a
subset of said plurality of matched financial products to said
client via the client interface component or an electronic message
based on said comparison; and

a transfer facilitation component transfers the client from
one financial product to another financial product selected from
said subset from the product comparison component, wherein the
transfer facilitation component automatically transfers a client to
a new financial product based on predetermined criteria.

REJECTION

The Examiner rejected claims 1–3, 5–12, 14–24, 26–28, 30–32, and

35–38 under 35 U.S.C. § 101 as directed to a judicial exception (i.e., an

abstract idea) without significantly more. Final Act. 2–8.

ANALYSIS

Appellant's arguments are unpersuasive of reversible Examiner error.

We adopt as our own (1) the findings and reasons set forth by the Examiner

in the action from which this appeal is taken (Final Act. 2–12) and (2) the

reasons set forth by the Examiner in the Examiner's Answer in response to

Appellant's Appeal Brief (Ans. 3–12) and concur with the conclusions

reached by the Examiner. We highlight the following for emphasis.

Patent eligibility is a question of law that is reviewable *de novo*.

Dealertrack, Inc. v. Huber, 674 F.3d 1315, 1333 (Fed. Cir. 2012).

Patentable subject matter is defined by 35 U.S.C. § 101, as follows:

> [w]hoever invents or discovers any new and useful process,
> machine, manufacture, or composition of matter, or any new
> and useful improvement thereof, may obtain a patent therefor,
> subject to the conditions and requirements of this title.

In interpreting this statute, the Supreme Court emphasizes that patent

protection should not preempt "the basic tools of scientific and technological

work." *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972); *Mayo Collaborative*

Servs. v. Prometheus Labs., Inc., 566 U.S. 66, 71 (2012); *Alice Corp. Pty.*

Ltd. v. CLS Bank Int'l, 134 S. Ct. 2347, 2354 (2014). The rationale is that patents directed to basic building blocks of technology would not "promote the [p]rogress of [s]cience" under the U.S. Constitution, Article I, Section 8, Clause 8, but instead would impede it. Accordingly, laws of nature, natural phenomena, and abstract ideas, are not patent-eligible subject matter. *Thales Visionix Inc. v. U.S.*, 850 F.3d 1343, 1346 (Fed. Cir. 2017) (citing *Alice*, 134 S. Ct. at 2354).

The Supreme Court set forth a two-part test for subject matter eligibility in *Alice* (134 S. Ct. at 2355). The first step is to determine whether the claim is directed to a patent-ineligible concept. *Id.* (citing *Mayo*, 566 U.S. at 76–77). If so, then the eligibility analysis proceeds to the second step of the *Alice/Mayo* test in which we "examine the elements of the claim to determine whether it contains an 'inventive concept' sufficient to 'transform' the claimed abstract idea into a patent-eligible application." *Alice*, 134 S. Ct. at 2357 (quoting *Mayo*, 566 U.S. at 72, 79). The "inventive concept" may be embodied in one or more of the individual claim limitations or in the ordered combination of the limitations. *Id.* at 2355. The "inventive concept" must be significantly more than the abstract idea itself, and cannot be simply an instruction to implement or apply the abstract idea on a computer. *Id.* at 2358. "'[W]ell-understood, routine, [and] conventional activit[ies]' previously known to the industry" are insufficient "to transform an abstract idea into a patent-eligible invention." *Id.* at 2359–60 (citing *Mayo*, 566 U.S. at 73).

Alice/Mayo Step 1: Abstract Idea

The Examiner finds the claims are

> directed to transferring a client from one financial product to another financial product on a recurring basis based on real time

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information and by obtaining and comparing financial product information which is considered to be an abstract idea inasmuch as such activity is considered both a fundamental economic practice and a method of organizing human activity.

Final Act. 3. The Examiner addresses the functionalities performed by the claimed structure and steps of the claimed method, finding each to fall within the types of activities considered to be abstract such as collecting, updating, communicating, filtering, evaluating, comparing and updating information and, as a result, transferring a client from one financial product to another. Final Act. 3–5.

Appellant contends "[u]nlike the examples of case law, the present claim does not rely solely on a mathematical algorithm; nor does it recite a fundamental economic or longstanding commercial practice." App. Br. 9. Appellant contends the invention is not abstract because it:

1. has concrete and tangible results (App. Br. 12–13);

2. is impossible to replicate by humans (App. Br. 10);

3. is impossible to replicate without the internet and a computer (App. Br. 9–11);

4. occurs in real time (App. Br. 10–11);

5. is clearly definable and understandable (App. Br. 13); and

6. is unlike those which case law has defined as abstract (App. Br. 12–13).

App. Br. 13–14 (citation to related supporting argument indicated in parentheses).

In connection with contention 1, Appellant asserts "the transfer of an existing financial product to another financial product is clear and concrete and produces tangible results." App. Br. 12. Appellant argues transferring

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money is not abstract, unlike the risk analysis found to abstract in *Alice* or the barter system in *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709 (Fed. Cir. 2014). App. Br. 12–13.

The Examiner responds, finding "transferring a client from one financial product to another financial product on a recurring basis based on real time information and by obtaining and comparing financial product information, . . . is a fundamental economic practice long prevalent in our system of commerce." Ans. 6. Contrary to Appellant's argument, the Examiner finds the argued transfer between financial products is "a patent-ineligible abstract idea just like hedging in *Bilski* and intermediated settlement in *Alice.*" Ans. 7. The Examiner further finds the transfer to be similar to fulfilling a contractual relationship as in *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014) and obtaining and comparing intangible data as in *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366 (Fed. Cir. 2011). Ans. 7–8. According to the Examiner the "transfer of money from an old account to a new account is only a transfer of data. Transfer or transformation of data is not a physical transformation." Ans. 9.

We are unpersuaded the argued transferring of a client from one financial product to another renders the claims non-abstract. Appellant's Specification describes problems of prior art systems such as having the potential to "hurt a consumer's credit score by posting multiple 'credit inquiries,'" failing to "provide comprehensive comparisons between the products for which the client is eligible," performing unnecessary transfers between financial products that are "costly, time consuming and cumbersome," and inadequate searches that are limited to "financial

products offered by the financial instruction implementing the system."
Spec. ¶ 5.

According to one embodiment, transferring a client between financial products is accomplished by transfer facilitation component 214. App. Br. 2–3. "Once client **100** chooses a financial product to replace an existing product, transfer facilitation component **214** provides assistance to the client in switching from an existing financial product (if any) to the new financial product." Spec. ¶ 50. Transfer facilitation component 214 may record information about the transfer including "the client's new financial product, the financial product information transmitted to the client, which financial product the client selected (if any), the outcome of the transfer, and whether the client failed to complete the process . . . [including] any information obtained through the operation of the financial product system **102**." Spec. ¶ 51. The transfer process is further disclosed as including, under various scenarios, the purchase of an existing mortgage loan from a previous lender, accepting funds from a savings account and depositing the funds into a new account, and opening a new credit card account and transferring pending balances from the old credit card account. Spec. ¶¶ 65–70.

All of the above-described activities attributable to the transfer facilitation component involve no more than the collection and exchange of information. Thus, the step of transferring includes the transmission of information causing the sale of any existing first product, the transmission of information causing the purchase of a new financial product, and recording of the sale/purchase transaction. Because we agree with the Examiner that trading financial products is a fundamental economic practice (Ans. 6–8), we also agree the argued transferring step is an abstract idea.

Furthermore, the claimed steps, including the step of transferring between financial products, can be accomplished manually. Activities that can be performed by a human, e.g., mentally, using pen and paper, and/or manually, without the use of a computer or any other machine, are essentially mental processes within the abstract-idea category. *See CyberSource*, 654 F.3d at 1372–73; *see also Bancorp Services, L.L.C. v. Sun Life Assurance Co. of Canada (U.S.)*, 687 F.3d 1266, 1278 (Fed. Cir. 2012). Merely providing the results of abstract processes of gathering, analyzing, and transmitting information so as to transfer a client between financial products, without more, is abstract as an ancillary part of steps used to identify and provide for the selection of a target financial product. *See, e.g., Content Extraction and Transmission LLC v. Wells Fargo Bank, Nat. Ass'n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014) (identifying "the abstract idea of 1) collecting data, 2) recognizing certain data within the collected data set, and 3) storing that recognized data in a memory"); *Ultramercial*, 772 F.3d at 715 (claims merely reciting abstract idea of using advertising as currency as applied to particular technological environment of the Internet not patent eligible).

Contentions 2–4 are similar in arguing the claimed steps cannot be performed manually but require use of the Internet and a computer to provide real-time performance. App. Br. 9–11. We are not persuaded of error. We agree with the Examiner that "relying on a computer to perform routine tasks more quickly or more accurately is insufficient to render a claim patent eligible." Ans. 11 (citing *Alice*, 134 S. Ct. at 2359). Whether it would be "feasible" to perform the method using "paper and pencil" is beside the point. "[R]elying on a computer to perform routine tasks more

quickly or more accurately is insufficient to render a claim patent eligible."
Id. These processes remain unpatentable even when automated to reduce
burden to the user of what once could have been done with pen and paper.
CyberSource, 654 F.3d at 1375 ("That purely mental processes can be
unpatentable, even when performed by a computer, was precisely the
holding of the Supreme Court in *Gottschalk v. Benson*.").

      Similarly, use of the argued Internet requirement does not save the
claim. Claim 1 only requires a client interface component comprising a web
page accessed via the Internet. However, the mere use of the Internet for
communications does not render the claims non-abstract. "[R]eceiving
transmitted data over a network and displaying it to a user merely implicates
purely conventional activities that are the 'most basic functions of a
computer.'" *Intellectual Ventures I LLC v. Erie Indent. Co.*, 850 F.3d 1315,
1331 (Fed. Cir. 2017) (quoting *Alice*, 134 S. Ct. at 2359). That is, "[a]n
abstract idea on 'an Internet computer network' or on a generic computer is
still an abstract idea." *Bascom Glob. Internet Servs., Inc. v. AT&T Mobility
LLC*, 827 F.3d 1341, 1348 (Fed. Cir. 2016).

      Appellant has not adequately explained how using the Internet is any
different than providing the same information via phone, paper, or in person.
Thus, use of the Internet according to claim 1 is neither a technical problem
nor a technical solution, but merely the application of an abstract idea on a
computer via the Internet. "We have repeatedly held that such invocations
of computers and networks that are not even arguably inventive are
insufficient to pass the test of an inventive concept in the application of an
abstract idea." *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1355
(Fed. Cir. 2016) (quotation omitted). *See also American Needle, Inc. v.*

Zazzle Inc., No. 2016-1550, 2016 WL 6647774 (mem) (Fed. Cir. Nov. 10,
2016) (affirming a district court holding that "providing a visual aide to
purchasing over the internet" is an abstract idea).

In connection with contention 5, Appellant argues the transfer of the
client from one product to another product "is a tangible concept which
results in a concrete and clearly understandable outcome, like giving the
client a new credit card to use on their daily purchases or transferring their
money from one bank account to another." App. Br. 13. With respect to
Appellant's aforementioned "useful, concrete, and tangible result"
contention, we note that our reviewing court has determined that the "useful,
concrete, and tangible result" test associated with *State Street Bank & Trust
Co. v. Signature Financial Group, Inc.*, 149 F.3d 1368, 1373 (Fed. Cir.
1998) is inadequate. *In re Bilski*, 545 F.3d 943, 959-960 (Fed. Cir. 2008)
(en banc); *see also Bilski v. Kappos*, 130 S. Ct. 3218, 3231 (2010). In any
case, we are not persuaded the step of transferring a client to another
financial product renders the invention non-abstract. For the reasons
discussed above, under a broad but reasonable interpretation, the disputed
transfer only involves the transmission of information constituting, at most,
an ancillary action.

Finally, in connection with contention 6, we disagree the invention "is
unlike those which case law has defined as abstract" (App. Br. 12–14) for
the reasons presented by the Examiner (Ans. 7–8, 12). In particular, we find
this case indistinguishable from a number of cases that have found
collecting, storing, and analyzing data, such as for loan application
processing, to be abstract ideas. *See Credit Acceptance Corp. v. Westlake
Servs.*, 859 F.3d 1044, 1054–57 (Fed. Cir. 2017) (holding "system for

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maintaining a database of information about items in a dealer's inventory, obtaining financial information about a customer from a user, combining these two sources of information to create a financing package for each of the inventoried items, and presenting the financing packages to the user" to be abstract); *Elec. Power*, 830 F.3d at 1354 ("[M]erely presenting the results of abstract processes of collecting and analyzing information, without more (such as identifying a particular tool for presentation), is abstract as an ancillary part of such collection and analysis."); *Mortg. Grader, Inc. v. First Choice Loan Servs. Inc.*, 811 F.3d 1314, 1324 (Fed. Cir. 2016) (holding that claims are abstract where they "recite nothing more than the collection of information to generate a 'credit grading' and to facilitate anonymous loan shopping"); *Content Extraction*, 776 F.3d at 1347 (identifying "the abstract idea of 1) collecting data, 2) recognizing certain data within the collected data set, and 3) storing that recognized data in a memory"); *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1367–69 (Fed. Cir. 2015) (determining claims adding generic computer components to financial budgeting not patent eligible); *Accenture Global Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1346 (Fed. Cir. 2013) (generating tasks in an insurance organization); *Dealertrack*, 674 F.3d at 1333–34 (holding that a "'computer-aided'" method for "processing information through a clearinghouse" for car loan applications is patent ineligible).

We are also unpersuaded by Appellant's contention that the Examiner has not evaluated the claim as a whole in determining whether it is directed to an abstract idea and, therefore, has not presented a prima facie case of ineligibility. App. Br. 15. The burden of establishing a prima facie case has been satisfied by the rationale provided by the Examiner and by having

compared the concept recited by the claims with those previously found to be abstract ideas. Final Act. 3–5; Ans. 3–8. The Examiner distinguishes the pending claims over those of claim 2 of Example 21 of the July 2015 Update and *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014), finding, unlike in those cases, "[i]n Appellant's claimed invention, the [claimed] features . . . are all conventional functions of a computer and hence are not considered an improvement to another technology or technical field, or an improvement to the functioning of the computer itself." Ans. 11–12.

> As the Federal Circuit has clarified,
>
> "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)). *See also In re Piasecki*, 745 F.2d 1468, 1472 (Fed. Cir. 1984). The Patent and Trademark Office ("PTO") satisfies its initial burden of production by "adequately explain[ing] the shortcomings it perceives so that the applicant is properly notified and able to respond." *Hyatt*, 492 F.3d at 1370. In other words, the PTO carries its procedural burden of establishing a prima facie case when its rejection satisfies 35 U.S.C. § 132, in "notify[ing] the applicant . . . [by] stating the reasons for [its] rejection, or objection or requirement, 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. That section "is violated when a rejection is so uninformative that it prevents the applicant from recognizing and seeking to counter the grounds for rejection." *Chester v. Miller*, 906 F.2d 1574, 1578 (Fed. Cir. 1990).

In re Jung, 637 F.3d 1356, 1362 (Fed. Cir. 2011) (brackets in original; bolding omitted).

Examiners may rely on their own technical expertise to describe the knowledge and skills of a person of ordinary skill in the art. *In re Berg*, 320

F.3d 1310, 1315 (Fed. Cir. 2003) (Examiners are "persons of scientific competence in the fields in which they work," and their findings are "informed by their scientific knowledge"); *see also* MPEP § 2141(II)(C) (Resolving the Level of Ordinary Skill in the Art) *and* MPEP § 2144.03 ("an examiner may . . . rely on 'common knowledge' in making a rejection"). Here, we find the Examiner's rejection satisfies the initial burden of production because the Examiner, in reviewing the claims, finds they are

> directed to transferring a client from one financial product to another financial product on a recurring basis based on real time information and by obtaining and comparing financial product information which is considered to be an abstract idea inasmuch as such activity is considered both a fundamental economic practice and a method of organizing human activity.

Final Act. 3. By setting forth a prima facie case that the claims are drawn to an abstract idea, including by citing to relevant precedent, the Examiner shifted the burden of response on this issue to Appellant.

Alice/Mayo Step 2: Inventive Concept

The Examiner finds "[t]he [claimed] elements together execute in routinely and conventionally accepted coordinated manners and interact with their partner elements to achieve an overall outcome which, similarly, is merely the combined and coordinated execution of generic computer functionalities which are well-understood, routine and conventional activities previously known to the industry." Final Act. 5–6. The Examiner concludes

> The claim as a whole, does not amount to significantly more than the abstract idea itself. This is because the claim does not affect an improvement to another technology or technical field; the claim does not amount to an improvement to the functioning of a computer system itself; and the claim does not

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move beyond a general link of the use of an abstract idea to a particular technological environment.

Final Act. 6.

Appellant contends the claims "recite additional elements that amount to significantly more than an abstract idea" because of

1. the depth of function of recited components (App. Br. 15);

2. recitation of significantly more than applying an abstract idea to a generic computer (App. Br. 15);

3. causation of a non-trivial "'something to happen'" (App. Br. 16);

4. provision of an advance in the field - no prior art cited (App. Br. 18); and

5. provision of an advance in the field Advance in the field - expert testimony presented (App. Br. 18).

App. Br. 18 (citation to related supporting argument indicated in parentheses).

In connection with contention 1, Appellant argues

[W]hen looking at the additional limitations as an ordered combination, the invention as a whole amounts to significantly more than simply organizing and comparing data. Similarly, the present invention recites the client interface component, the data warehouse component, the data collection component, the communication component, the decisionmaking component, the product comparison component, and the transfer facilitation component, each of which have specific functions. The interaction of the multiple servers and the multiple components which perform their very specific functions show additional limitations which amount to more than simply transferring a customer from one product to another product, or "applying an abstract idea on the Internet."

App. Br. 15.

The Examiner responds, finding "[t]he claims of the instant case employ a generic computing system comprising a server comprising several software components suitably programmed to execute the claimed steps. The components in the claims are broadly interpreted to correspond to software components and not tangible hardware components." Ans. 8.

We are not persuaded the Examiner erred in finding the claims do not include additional elements that are sufficient to amount to significantly more than the judicial exception under step 2 of the *Alice/Mayo* framework. In particular, Appellant's argument that the claims require specific components only belies that each of the named components merely requires execution of a data collection, communication, collection, comparison and/or analysis steps typically performed by a computer or, in this case, by one or more servers,[3] steps that would be performed manually otherwise. Appellant fails to identify how the various steps and functions performed by the server(s) provide an improvement to another technology, i.e., an improvement to how a computer or the recited server performs or executes the abstract idea identified in step 1 of *Alice/Mayo* framework.

For example, Appellant asserts the invention "addresses the Internet-centric and time-sensitive challenge of alerting a consumer and transferring the consumer from one product to another product in real time, without affecting the consumer's credit score." App. Br. 16. However, Appellant fails to identify any improvement specific to the computer rather than an

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[3] The Specification does not provide a definition for the term server. Accordingly, we interpret a server to mean a computer or program that responds to commands from a client. *See* THE MICROSOFT PRESS COMPUTER DICTIONARY 474 (Fifth Edition, Microsoft Press 2002). ISBN 0-7356-1495-4.

improvement to the underlying abstract idea of transferring a client from one
financial product to another financial product.

In connection with contention 2 Appellant argues "[t]he interaction of
the multiple servers and the multiple components which perform their very
specific functions show additional limitations which amount to more than
simply transferring a customer from one product to another product, or
'applying an abstract idea on the Internet.'" App. Br. 15. This argument is
unpersuasive because it is not commensurate in scope with the argued
independent claims which do not require plural servers and, therefore, do not
require the argued interaction between servers. Furthermore, even if
otherwise, Appellant fails to detail any server interactivity which improves
the performance of the computers (servers), communication network, or
system overall. Instead, we agree with the Examiner that

> The asserted benefits of the claimed invention *(namely the
> time, effort, and process of seeking, finding, comparing, applying
> for, being approved, accepting, and transferring from one
> financial product to another financial product is essentially
> eliminated)* [(App. Br. 18)] (emphasis added) is a result of an
> improvement to the business process. In particular, the steps in
> the Appellant's claimed invention taken collectively may
> indicate improvements to the business process. The
> improvements to the business process may indicate novel or non-
> obvious features in the claimed invention (compared to prior art).
> The presence of novel or non-obvious features (compared to
> prior art of record) in a claim may make the claim allowable over
> prior art. However the presence of novel or non-obvious features
> does not convert an abstract idea into something concrete.

Ans. 11. Thus, although possibly providing an improvement to the
underlying abstract idea, we find insufficient evidence that the claims are

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directed to improving the technical field of computers, communications, networking, or otherwise.

Appellant's contention 4 arguing that the absence of a prior art rejection supports a finding that the invention provides an improvement in the field and technology (App. Br. 18) is unpersuasive because, as explained by the Examiner,

> While the presence of novel or non-obvious features in the Appellant's claimed invention may indicate an improvement to the business process, in the instant case it does not indicate an improvement to a technological process. By relying on a computer to perform routine tasks more quickly or more accurately is insufficient to render a claim patent eligible.

Ans. 11 (citing *Alice*, 134 S. Ct. at 2359 (use of a computer to create electronic records, track multiple transactions, and issue simultaneous instructions is not an inventive concept)). Although novelty is a factor to be considered when determining "whether the claims contain an 'inventive concept' to 'transform' the claimed abstract idea into patent-eligible subject matter" (*Ultramercial*, 772 F.3d at 715), a finding of novelty or nonobviousness does not necessarily lead to the conclusion that subject matter is patentable eligible. "Groundbreaking, innovative, or even brilliant discovery does not by itself satisfy the § 101 inquiry." *Ass'n for Molecular Pathology v. Myriad Genetics, Inc.*, 133 S. Ct. 2107, 2117 (2013). Here, Appellant has not shown novel features that transform the abstract idea into patent-eligible subject matter.

Finally, we are not persuaded by the Declarations of Appellant's experts as the facts and opinions presented therein only address issues of what is disclosed by the prior art and obviousness of the claims. The declarations do not address technical advantages and improvements to the

operation or performance of the servers, computers, communications, or other systems and, therefore, are irrelevant to the issues presented under step 2 of the *Alice/Mayo* framework.

For the reasons discussed, we agree with the Examiner in finding the "Claim[s] do[] not affect an improvement to another technology or technical field; [do] not amount to an improvement to the functioning of a computer system itself; and [do] not move beyond a general link of the use of an abstract idea to a particular technological environment." Final Act. 6. Accordingly, we are not persuaded the Examiner erred in finding the claims lack eligibility under step 2 of the *Alice/Mayo* framework. Therefore, we sustain the rejection of claims 1–3, 5–12, 14–24, 26–28, 30–32, and 35–38 under 35 U.S.C. § 101.

DECISION

We affirm the Examiner's decision to reject claims 1–3, 5–12, 14–24, 26–28, 30–32, and 35–38 under 35 U.S.C. § 101.

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