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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JOHAN L. OLSSON¹

Appeal 2017-002569
Application 13/934,435
Technology Center 3600

Before JAMES R. HUGHES, JESSICA C. KAISER, and
MATTHEW J. McNEILL, *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, 4–10, and 12–17. Claims 3 and 11 have been canceled. Final Act. 1–2.² We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

¹ According to Appellant, the real party in interest is Nasdaq Technology AB. Appeal Br. 3.

² We refer to Appellant’s Specification (“Spec.”) filed July 3, 2013 (claiming benefit of US 11/453,252, filed June 15, 2006); Appeal Brief (“Appeal Br.”) filed Apr. 4, 2016; and Reply Brief (“Reply Br.”) filed Dec. 2, 2016. We also refer to the Examiner’s Final Office Action (Final Rejection) (“Final Act.”) mailed Nov. 4, 2015, and Answer (“Ans.”) mailed Oct. 3, 2016.

Appellant's Invention

The invention generally “relates to a method for negotiating trades on electronic trading systems and to an electronic trading system enabling on-line trading negotiation between users” (Spec. 1:11–13). More specifically, the negotiation process (method) stores unmatched bids and offers for a financial instrument (to be matched/for matching) in an order book memory. Bids, offers, and corresponding instruments are matched (a match occurs) when a bid order price for an instrument equaling or exceeding an offer order price for the instrument is identified. The negotiation method receives a trade negotiation request associated with a selected order (which has a priority position in the order book), forwards the (trade negotiation) request to a submitter of the selected order, and receives in return an acceptance or a rejection of the trade negotiation request (from the submitter). If the trade negotiation request is accepted by the submitter, the method initiates an internal (intra-trading-system) negotiation procedure between the requester (user terminal) and the submitter (of the selected order). The method then freezes the selected order (sets the selected order in the order book to a frozen state at the priority position in the order book) to prevent the frozen order from being matched (to other bids) while the internal negotiation procedure is active. Spec. 1:11–12, 1:22–29, 4:1–9, 6:3–19, 7:5–6, 7:25–8:2, 8:5–9, 11–32, 11:2–8, Abstract.

Representative Claim

Independent claim 1, reproduced below, further illustrates the invention:

1. A method of negotiating trades on an electronic trading system, comprising the steps of:

storing by the electronic trading system in an order book memory unmatched bids and offers for an instrument entered for matching by user terminals coupled to the electronic trading system, where a match occurs when a bid order price for the instrument equaling or exceeding an offer order price for the instrument is identified;

receiving by the electronic trading system, from one of the user terminals, a trade negotiation request associated with a select order having a priority position in the order book;

forwarding by the electronic trading system the trade negotiation request to a submitter of the selected order;

receiving by the electronic trading system an accept or a reject to the trade negotiation request from the submitter;

initiating by the electronic trading system an intra-trading-system negotiation procedure between the user terminal and the submitter of the selected order when the negotiation request is accepted by the submitter of the selected order, where the intra-trading-system is within the electronic trading system and the intra-trading-system negotiation procedure uses a control processor in the electronic trading system to facilitate the negotiation procedure;

setting the selected order in the order book to a frozen state at the priority position in the order book; and

preventing the frozen order from being matched by the electronic trading system while the negotiation procedure is active.

Rejection on Appeal

The Examiner rejects claims 1, 2, 4–10, and 12–17 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 and 9 (as well as dependent claims 2, 5–8, 10, and 13–17) together as a group with respect to the § 101 rejection. *See* Appeal Br. 7–18. We select independent claim 1 as representative of Appellant's arguments with respect to claims 1, 2, 5–10, and 13–17. 37 C.F.R. § 41.37(c)(1)(iv). We also discuss dependent claims 4 and 12 (*infra*).

The Examiner rejects the claims (claim 1) as being directed to patent-ineligible subject matter in that “[t]he claimed invention is directed” “to the abstract idea of a fundamental economic practice and a fundamental method of organizing human activities” (emphasis omitted)—“a method of negotiating trades on an electronic trading system” (emphasis omitted)—and the claims “do not amount to significantly more than an abstract idea.” Final Act. 5. Further, the Examiner explains the “claims . . . do not include an improvement to another technology or technical field, an improvement to the functioning of the computer itself, or meaningful limitations beyond generally linking the use of an abstract idea to a particular technological environment.” Final Act. 5 (emphasis omitted). Also, the Examiner explains that the “[t]he additional elements or combination of elements in the claims other than the abstract idea . . . amount to no more than a method of negotiating trades on an electronic trading system” in that “the method is implemented on a computer[and] the computer serves to perform generic computer functions that are well-understood, routine, conventional, and

previously known to the financial industries.” Final Act. 5 (emphasis omitted).

Appellant contends that “[t]he final office action provides no evidentiary support to show that the claim language is abstract.” Appeal Br. 8 (citing *PNC Bank v. Secure Access, LLC*, CBM2014-00100, 2014 WL 4537440 (PTAB Sept. 9, 2014)). See Appeal Br. 7–9. Appellant further contends that “the final action offers no evidence or analysis to demonstrate that the additional claim elements” “are well-understood, routine and generic computer functions” (quotations omitted) and that the Examiner has not presented a prima facie case “under *Alice* step two.” Appeal Br. 10; see Appeal Br. 9–11. Additionally, Appellant contends: the Examiner’s reasoning is contradictory (contrasting the Examiner’s reasons for allowance with the Examiner’s *Alice* step two analysis) (see Appeal Br. 12); the claims “satisfy part two of the *Alice* test” because “[t]he claims require substantially more than simply requiring a generic computer to merely carry out negotiating trades on an electronic trading system” (Appeal Br. 12 (quotations omitted); see Appeal Br. 12–14); the claims are analogous to “Example 21” of the USPTO’s “July [2015] Update Appendix 1” and are, therefore, patent eligible (Appeal Br. 14 (quotations omitted); see Appeal Br. 14–15); “the scope of the claimed subject matter is sufficiently specific that” (Appeal Br. 16) “[t]here is *no preemption* of the idea of negotiating trades on an electronic trading system” (Appeal Br. 15 (quotations omitted)) (see Appeal Br. 15–16); and dependent claims 4 and 12 add additional “technical” features (see Appeal Br. 18–19). See Appeal Br. 7–19; Reply Br. 2–11.

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 claim 1 (as well as claims 2, 4–10, and 12–17) is directed to the abstract idea of “negotiating trades on an electronic trading system” because the claim is directed to “a fundamental

economic practice and a fundamental method of organizing human activities” and the claim does not improve the functioning of the computer itself (or any other technology), or provide meaningful limitations beyond linking the “abstract idea to a particular technological environment.” Final Act. 5. Conversely, Appellant attacks the Examiner’s findings as being an inaccurate characterization and lacking evidentiary support—that is, according to Appellant, the Examiner fails to present evidence that the claims are directed to an abstract idea such as a fundamental economic practice or mere method of organizing human activities and, thus, the Examiner’s reasoning and analysis do not include sufficient substance to rise to the level of a prima facie showing. *See* Appeal Br. 6–9; Reply Br. 2–3. We agree with the Examiner that Appellant’s claim 1 (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 the claims (in particular claim 1) 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. 4, 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. 2–6. Contrary to Appellant's assertions, in doing so, the Examiner set forth a *prima facie* case of unpatentability such that the burden of production shifted to Appellant to demonstrate that the claims are patent-eligible.

Appellant argues that evidentiary support is required to establish a *prima facie* case of patent-ineligibility. *See* Appeal Br. 8–9; Reply Br. 2–3 (citing *Secure Access*, CBM2014-00100, 2014 WL 4537440). We note that *Secure Access* is a non-precedential PTAB opinion, and therefore, not binding on this panel. Moreover, there are significant differences between the attorney arguments that are presented in a post-grant AIA-CBM proceeding such as *Secure Access* compared to findings and conclusions of an Examiner. *See Icon Health & Fitness, Inc. v. Strava, Inc.*, 849 F.3d 1034, 1042–44 (Fed. Cir. 2017) (discussing differences between attorney arguments and the Examiner's findings). Further, the Panel in *Secure Access* relied on more than the lack of persuasive evidentiary support in determining that the claims were not directed to an abstract idea. *See Secure*

Axcess, Paper 13, slip op. at 4 (PTAB Sept. 30, 2014) (recognizing that the lack of evidence was only “one factor in our analysis” in denying request for rehearing). We 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 (Appeal Br. 8–9), is not required for a prima facie showing.

With respect to Appellant’s contentions that the Examiner mischaracterized the claims, claim 1 recites a method that: stores information (unmatched bids and offers for a financial instrument) in memory (an order book memory); receives information (a trade negotiation request associated with a selected order (which has a priority position in the order book)); forwards information (the trade negotiation request) to a submitter of the selected order; receives additional information (an accept or a reject to the trade negotiation request from the submitter); initiates an intra-trading-system negotiation procedure (when the trade negotiation request is accepted by the submitter of the selected order) utilizing a control processor to facilitate the negotiation procedure; and sets the selected order in the order book to a frozen state at the priority position in the order book (during the negotiation procedure). In sum, as the Examiner finds, claim 1 is directed to “negotiating trades on an electronic trading system,” which is “a fundamental economic practice” and “method of organizing human activities,” i.e., an abstract idea. Final Act. 5 (emphasis omitted). Although we could characterize claim 1 with more detail, for example, as being

directed to communicating, organizing, analyzing (comparing), and manipulating data to facilitate negotiating trades on an electronic trading system, including an internal (intra-trading-system) negotiation procedure, such details do not substantively 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 1 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 1 in particular, relate to collecting and communicating information, organizing the information (in priority order), and analyzing/manipulating information to negotiate trades for financial instruments on a computer system (electronic trading system) (*see discussion supra*). That is, Appellant’s claims relate to organizing, collecting, analyzing, communicating, and

manipulating data utilizing un-recited processes or algorithms and devices to facilitate and negotiate trades for financial instruments. Therefore, the claims broadly recite organizing, collecting, analyzing, transferring, and manipulating information (data) relating to financial transactions. *See* Abstract; Spec. 1:11–29, 2:28–3:10. This is consistent with how Appellant describes the claimed invention. *See* Appeal Br. 3–4 (citing Spec. 1:11–12, 1:22–25, 4:7, 6:3–19, 7:5–6, 7:25–8:2, 8:7–9, 8:13–14, 8:28–32, 11:2–8).

Also, the present 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, organizing, analyzing, and manipulating information. *Elec. Power Grp.*, 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, organizing, 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”); *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat’l Ass’n*, 776 F.3d 1343, 1345, 1347 (Fed. Cir. 2014) (finding the “claims generally recite . . . extracting data . . . [and] recognizing specific information from the extracted data” and that the “claims are drawn to the basic concept of data recognition”).

The Federal Circuit has also held that abstract ideas include financial transactions or other “fundamental economic practices” (Final Act. 5) (emphasis omitted). *See Credit Acceptance Corp. v. Westlake Servs.*, 859

F.3d 1044, 1049–51, 1054 (Fed. Cir. 2017) (the claims are “directed to the abstract idea of processing an application for financing a purchase”, which is “a fundamental economic practice long prevalent in our system of commerce” (internal quotations omitted)); *Intellectual Ventures I LLC v. Capital One Bank*, 792 F.3d 1363, 1367–70 (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, Inc. v. Google, Inc.*, 765 F.3d 1350, 1353–55 (Fed. Cir. 2014) (claims reciting sending and receiving communications over a computer network to facilitate online commercial transactions (*id.* at 1351–52) are directed to “contractual relations, which are intangible entities” and “constitute[] a fundamental economic practice long prevalent in our system of commerce” (*id.* at 1353–54 (internal quotations omitted))).

Here, the collection, organization, analysis, manipulation, and communication of information (data)—in the form of storing information (unmatched bids and offers for a financial instrument) in memory (an order book memory); receiving information (a trade negotiation request associated with a selected order (which has a priority position in the order book)); forwarding information (the trade negotiation request) to a submitter of the selected order; receiving additional information (an accept or a reject to the trade negotiation request from the submitter); initiating an intra-trading-system negotiation procedure (when the trade negotiation request is accepted by the submitter of the selected order) utilizing a control processor to facilitate the negotiation procedure; and setting the selected order in the order book to a frozen state at the priority position in the order book (during

the negotiation procedure)—are analogous to the abstract ideas of collecting, analyzing, and manipulating information discussed in *Electric Power Group*, *Two-Way Media*, and *Content Extraction*. Further, negotiating trades on an electronic trading system is analogous to the fundamental economic practices found to be abstract ideas in *Credit Acceptance Corp.*, *Intellectual Ventures I*, and *buySAFE*.

Appellant’s claims can also be distinguished from patent-eligible claims such as those in *Enfish* that are 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 (negotiating trades on an electronic trading system) 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 summary, “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 Grp.*, 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. *See* Spec. 6:5–24 (users may be “terminals” that “can communicate with an electronic trading system 106 through a network 107,” where a terminal may be “any device” including “PC, laptop, palm-held devices, mobile phones” and the electronic trading system “can be made up

of essentially any combination of hardware and software for performing the functions”).

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. 5–6; Ans. 6–12. Appellant, on the other hand, contends the Examiner did not provide sufficient evidence or analysis “to demonstrate that the additional claim elements” “are well-understood, routine and generic computer functions.” Appeal Br. 10 (quotations omitted); *see* Appeal Br. 9–11; Reply Br. 3–4, 8. Appellant also contends the claims are directed to significantly more than an abstract idea, *inter alia*, “require substantially more than simply requiring a generic computer to merely carry out negotiating trades on an electronic trading system.” Appeal

Br. 12 (quotations omitted); *see* Appeal Br. 12–14. In addition, Appellant contends that the claims are analogous to an example provided in the USPTO’s guidelines—“Example 21” of the USPTO’s “July [2015] Update Appendix 1.” *See* Appeal Br. 14–15.

Appellant fails to persuade us of error in the Examiner’s rejection with respect to the second *Alice* step. We agree with the Examiner that Appellant’s claim 1 (and the other pending claims) does not evince an “inventive concept” that is significantly more than the abstract idea itself.

With respect to Appellant’s *prima facie* case and evidentiary contentions, the Examiner provides an explanation as to why claim 1 is patent ineligible under the second *Alice* step. *See* Final Act. 5–6; Ans. 6–12. The Examiner also provides supporting evidence. *See* Ans. 7 (citing Spec. 6:5–15). We agree with the Examiner that the collection, receiving, transferring, and analyzing information, utilizing undisclosed means (algorithms, processes, and/or devices) utilizing a generic computer system and processor (*see* discussion *supra*; Spec. 6:5–24) does not amount to significantly more than the abstract idea.

With respect to Example 21, the analysis of the exemplary claim explains how additional limitations of the claim address “the Internet-centric challenge of alerting a subscriber with time sensitive information when the subscriber’s computer is offline” by “transmitting the alert over a wireless communication channel to activate the stock viewer application.” July 2015 Update Appendix 1: Examples³ at 4. Unlike Appellant’s claim 1, claim 2 in Example 21 recites additional limitations that, when considered as an

³ July 2015 Update Appendix 1: Examples, pp. 1–5, available at <https://www.uspto.gov/sites/default/files/documents/ieg-july-2015-appl.pdf>.

ordered combination, amount to significantly more than the abstract idea. Appellant points to no such limitation(s) in claim 1. *See* Appeal Br. 14–15. Collecting information, receiving additional information, transferring (forwarding) information, and analyzing the collected information (*see* discussion *supra*) does not amount to significantly more than the abstract idea because it is insignificant extra-solution activity. *See Elec. Power Grp.*, 830 F.3d at 1354–55 (the collection, analysis, and display of information is insignificant extra-solution activity).

Appellant further contends a number of recent cases support patent eligibility of Appellant’s claims 1 and 9 under the second part of the *Alice* eligibility analysis. *See* Appeal Br. 16–18; Reply Br. 5–7, 9–11.⁴ For example, Appellant states “[t]he Federal Circuit’s recent *Enfish*, *BASCOM*, *McRO*, and *Amdocs* decisions all found patent eligible subject matter without requiring improvement to another technology or technical field.” Reply Br. 5 (quotations omitted). Appellant cites *Amdocs* for the proposition that “the improvement . . . need [not] be in the computer itself but rather the improvement [may be] in the claimed ‘system itself.’” Reply Br. 6 (citing *Amdocs*, 841 F.3d at 1302); *see* Reply Br. 5–7, 10–11. We are unpersuaded by Appellant’s arguments. The court in *Amdocs* found the claims “entail[] an unconventional technological solution (enhancing data in a distributed fashion) to a technological problem (massive record flows which previously required massive databases),” i.e., the claims met the

⁴ Appellant, for example, cites *Trading Technologies Int’l, Inc. v. CQG, Inc.*, 2015 WL 774655 (N.D. Ill. Feb. 24, 2015), *aff’d* *Trading Technologies Int’l, Inc. v. CQG, Inc.*, 675 Fed. App’x 1001, 1004 (Fed. Cir. 2017) (explaining that the district court found the claims were not directed to an abstract idea).

second *Alice* step because they were unconventional. *Amdocs*, 841 F.3d at 1300. Here, Appellant simply reiterates the limitations of claim 9 (and claim 1) and concludes that the limitations are not routine or conventional. *See* Reply Br. 7. Appellant does not explain how the limitations (individually and in combination) are not routine or are unconventional. As we explain *supra*, we agree with the Examiner that Appellant’s claim limitations do not amount to significantly more than the abstract idea of negotiating trades on an electronic trading system, in that the limitations implement (facilitate) negotiating trades of financial instruments by performance of well-understood, routine, and conventional activities.

To the extent Appellant’s arguments invoke *DDR Holdings, LLC v. Hotels.com L.P.*, 773 F.3d 1245 (Fed. Cir. 2014) (*see* Appeal Br. 16–18; Reply Br. 9–10)—in that the instant claims allegedly improve the operation of a computer system—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 and as discussed *supra*, claim 1 simply transfers and manipulates data using known conventional computers and/or equipment, to facilitate negotiating trades on an electronic trading system according to an undisclosed process and/or algorithm. *See* Spec. 6:5–24. Despite Appellant’s arguments to the contrary, nothing in claim 1 recites a “specific improvement to the way computers operate.” The communication, analysis, and manipulation of trade information, and the resulting negotiating of trades by conventional

means (an electronic trading system), is not a solution to a technical problem as discussed in *DDR Holdings*.

Rather, facilitating negotiating trades on an electronic trading system based on collected, received, and/or transferred bid, offer, and order information and additional received data (negotiation request and acceptance of the request), is a commercial solution to a routine and conventional financial transaction, not a technical solution to a computer or networking problem. This commercial solution may be assisted using a general purpose computer (*see* Spec. 6:5–24) to perform the data transfer, 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. *See Elec. Power Grp.*, 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. 6–12. The claim merely recites functions (processes) for communicating, analyzing, and manipulating data using known conventional computers and/or equipment to effect conventional financial transactions. 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 and 9, as well as dependent claims 2, 5–8, 10, and 13–17, which were not argued separately.

Appellant provides nominal separate arguments with respect to dependent claims 4 and 12. *See* Appeal Br. 18–19. Here, Appellant merely reiterates the limitations of the claims and contends the Examiner has not provided evidence showing the disputed limitations describe a “generic computer function” and are directed to a “fundamental method of organizing human activities.” Appeal Br. 18 (quotation omitted). Appellant does not persuade us of error in the Examiner's rejection of these claims under § 101 for the same reasons as claim 1 discussed *supra*. Accordingly, we also sustain the Examiner's rejection of claims 4 and 12 under § 101.

CONCLUSION

Appellant has not shown that the Examiner erred in rejecting claims 1, 2, 4–10, and 12–17 under 35 U.S.C. § 101.

DECISION

We affirm the Examiner's rejection of claims 1, 2, 4–10, and 12–17.

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