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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* NATHAN VICTOR BAK,  
ELIZABETH BARUKA SILBERG, YELENA BAYEVA,  
SUKADEV BHATTIPROLU, and  
ALEXIS HOPE BRUEMMER

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Appeal 2017-003795  
Application 12/822,772<sup>1</sup>  
Technology Center 3600

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Before JOSEPH A. FISCHETTI, PHILIP J. HOFFMANN, and  
BRADLEY B. BAYAT, *Administrative Patent Judges*.

HOFFMANN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellants appeal from the  
Examiner’s rejection of claims 9–20. We have jurisdiction under 35 U.S.C.  
§ 6(b).

We AFFIRM.

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<sup>1</sup> According to Appellants, “[t]he real party in interest is International  
Business Machines Corporation.” Appeal Br. 2.

According to Appellants, “the invention relates to the automated scheduling of meetings on calendars and the organization of such calendars of invitees based upon the importance of a set of predetermined attributes of such meetings.” Spec. 1. Claims 9 and 13 are the independent claims on appeal. We reproduce claim 9, below, as illustrative of the appealed claims.

9. A computer controlled system, for the scheduling of meetings on the calendars of invitee users in a network of computer controlled user interactive display stations, comprising:

a processor; and

a computer memory holding computer program instructions which when executed by the processor perform the method comprising:

prompting an inviter, at a sending display station, to enter into an invitation an [sic] predetermined general set of attributes for the scheduled meeting;

enabling each invitee to predetermine a set of invitee-specific attributes applicable to each invitation; and

enabling each invitee to prioritize each predetermined general attribute and each invitee-specific attribute to a numerical priority level to determine the priority of said meeting on the invitee’s calendar.

## REJECTION

The Examiner rejects claims 9–20 under 35 U.S.C. § 101 as ineligible subject matter.

## ANALYSIS

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: “[l]aws of nature, natural phenomena, and abstract ideas” are not eligible for patenting. *See, e.g., Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014).

The Supreme Court, in *Alice*, reiterated the two-step analysis previously set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (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 Corp.*, 134 S. Ct. at 2355. The first step in that analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts.” *Id.* If the claims are not directed to a patent-ineligible concept, e.g., 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 there are additional elements that “‘transform the nature of the claim’ into a patent-eligible application.” *Id.* (quoting *Mayo*, 566 U.S. at 78, 79).

Regarding the first step of the analysis, the Supreme 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. Therefore, we look to whether the claims focus on a specific means or method that improves the relevant technology, or instead whether the claims are 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).

With respect to the Examiner’s rejection of the claims under § 101, the Examiner states that the claims are rejected in accordance with the 2014 Interim Guidance on Patent Subject Matter Eligibility (79 Fed. Reg. 74618, 74625 (Dec. 16, 2014)), and the Examiner applies the two-step *Alice/Mayo* analysis set forth above. *See, e.g.*, Final Action (mailed Apr. 25, 2016) 2–6, *n.b.* at 2 (“As discussed in the 2014 Interim Guidance of Patent Subject Matter Eligibility . . . , all claims having an abstract idea are analyzed under a two-part analysis from *Alice Corp.*”) (citation omitted). Similarly, our Decision in the previous appeal for this Application applied the two-part *Alice/Mayo* analysis. *See* Decision (mailed Oct. 19, 2015) in Appeal no. 2013-009289, 3–6.

Nonetheless, in both their Appeal Brief and Reply Brief, Appellants argue that the rejection is in error because “claims 9–20 . . . meet both prongs of the in re *Bilski* tests, on which the rejection is based.” Appeal Br. 6; *see also id.* at 6–7; *see also* Reply Br. 2–4, *n.b.* at 2 (“Appellants have argued that . . . claims 9–20 . . . meet both prongs of the in re *Bilski* tests, on which the rejection is based.”). In *Bilski v. Kappos*, 130 S. Ct. 3218 (2010), the Supreme Court applied the machine-or-transformation test to determine whether the claims at issue were eligible subject matter. There, the Court indicated that the test “is not the sole test for deciding whether an invention is a patent-eligible ‘process,’” but, instead, is a “useful and important clue” and “investigative tool” for determining whether some claimed methods are statutory processes. *Bilski* 130 S. Ct. at 3227. We determine that Appellants’ arguments directed to the machine-or-transformation test do not establish that the Examiner errs in either step of the *Alice/Mayo* analysis.

Conversely, based on our review, we agree with the Examiner’s findings and conclusions regarding both steps of the *Alice/Mayo* analysis—i.e., that the claims are abstract and do not recite additional elements that transform the nature of the claims into a patent-eligible application. Specifically, with respect to independent claim 9, we agree with the Examiner’s finding that “the claims are directed to the abstract idea of scheduling a meeting on a calendar.” Answer 3; Final Action 3. We note that, apart from the recitation of a generic “processor,” “computer memory,” and “display stations” (Appeal Br., Claims App. (Claim 9)), the claimed method may be performed by the human mind, or by a human using a pen and paper. The Federal Circuit has held that if a method can be performed by human thought alone, or by a human using pen and paper, it is merely an abstract idea and is not patent-eligible under § 101. *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1373 (Fed. Cir. 2011) (“[A] method that can be performed by human thought alone is merely an abstract idea and is not patent-eligible under § 101.”). Further, a claim that essentially only recites information collection, analysis, and display, such as is recited by Appellants’ claim 9, is directed to an abstract idea. *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016) (holding that “collecting information, analyzing it, and displaying certain results of the collection and analysis” are “a familiar class of claims ‘directed to’ a patent-ineligible concept”); *see also In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d 607, 611 (Fed. Cir. 2016); *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093–94 (Fed. Cir. 2016). Further, Appellants’ claim 9, unlike claims found patent eligible in prior cases, uses generic computer technology (i.e., “a processor,” “a computer memory,” and “display stations”) (Appeal

Br, Claims App. (Claim 9)), and, thus, does not recite an improvement to a particular computer technology. *See, e.g., McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314–15 (Fed. Cir. 2016) (finding claims not abstract because they “focused on a specific asserted improvement in computer animation”). As such, Appellants’ claim 9 is “directed to” an abstract idea in accordance with the first step of the *Alice* analysis. *Alice Corp.*, 134 S. Ct. at 2355.

We also agree with the Examiner (*see, e.g.,* Final Action 3–5) that the generic components in claim 9 listed above “fails to transform that abstract idea into a patent-eligible invention.” *See Alice*, 134 S. Ct. at 2352, 2357 (“[C]laims, which merely require generic computer implementation, fail to transform [an] abstract idea into a patent-eligible invention.”). Taking claim 9’s recitations separately, the functions performed by the generic components in each step of the claimed process is purely conventional. More specifically, using generic components to prompt a sender to enter a predetermined general set of attributes, enabling responders to predetermine a set of specific attributes, and enabling responders to prioritize each predetermined general attribute and each specific attribute to a numerical priority level to determine the priority of a meeting on the responders calendar, appear to be functions of a generic computer. These computer functions appear to be well-understood, routine, and conventional activities previously known to the industry. In short, each step does no more than require a generic computer to perform conventional computer functions. Further, when taken as a whole, claim 9 also does no more than simply instruct one to implement the abstract idea on a generic computer. *See Elec. Power Grp.*, 830 F.3d at 1355 (“Nothing in the claims, understood in light of

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the specification, requires anything other than off-the-shelf, conventional computer, network, and display technology for gathering, sending, and presenting the desired information”).

Thus, based on the foregoing, we sustain independent claim 9’s rejection under Section 101. Inasmuch as Appellants do not argue claims 10–20 separately, we also sustain the Section 101 rejection of these claims.

#### DECISION

We AFFIRM the Examiner’s rejection of claims 9–20.

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