



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/764,753	02/11/2013	Andrey Zaytsev	058407-429482	1242
826	7590	09/20/2018	EXAMINER	
ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			NGUYEN, LIZ P	
			ART UNIT	PAPER NUMBER
			3696	
			NOTIFICATION DATE	DELIVERY MODE
			09/20/2018	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

usptomail@alston.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ANDREY ZAYTZSEV, ULF SCHWEKENDIEK,
and TUOMAS ARTMAN

Appeal 2017-003946
Application 13/764,753¹
Technology Center 3600

Before DENISE M. POTHIER, LARRY J. HUME, and
MATTHEW J. McNEILL, *Administrative Patent Judges*.

HUME, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) of the Final Rejection of claims 7–19 and 40–46, which are all claims pending in the application. Appellants have canceled claims 1–6 and 20–39. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ According to Appellants, the real party in interest is GROUPON, INC. App. Br. 1.

STATEMENT OF THE CASE²

The Invention

Appellants' disclosed embodiments and claimed invention "relate, generally, to token management for secure transactions using a consumer device." Spec. ¶ 2.

More specifically, embodiments provided herein may include a payment system that may be implemented to provide merchants (e.g., those that have "brick-and-mortar" retail space and/or online ordering storefronts) a way to receive payment from a consumer based on data sent by a consumer's mobile device and without the consumer having to present a physical payment instrument, identification, or currency directly to the merchant. Spec. ¶ 4.

Exemplary Claim

Claim 7, reproduced below, is representative of the subject matter on appeal:

7. A payment processing system comprising:
a networked device comprising processing circuitry configured to:
 - generate a plurality of wallet identifying tokens, each wallet identifying token associated with a private key and consumer identifying data;
 - send the plurality of wallet identifying tokens to a consumer device;

² Our decision relies upon Appellants' Appeal Brief ("App. Br.," filed June 2, 2016); Reply Brief ("Reply Br.," filed Jan. 3, 2017); Examiner's Answer ("Ans.," mailed Nov. 3, 2016); Final Office Action ("Final Act.," mailed Nov. 17, 2015); and the original Specification ("Spec.," filed Feb. 11, 2013).

receive from the consumer device, via a merchant device, a first wallet identifying token;

validate the first wallet identifying token based at least in part on whether the first identifying token is one of the plurality of wallet identifying tokens; and

send the consumer identifying data associated with the first wallet identifying token to the merchant device if the first wallet identifying token was validated.

*Rejection on Appeal*³

Claims 7–19 and 40–46 stand rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. Final Act. 4.

CLAIM GROUPING

Based on Appellants' arguments (App. Br. 8–25), we decide the appeal of the patent-ineligible subject matter rejection of claims 7–19 and 40–46 on the basis of representative claim 7.⁴

ISSUE

Appellants argue (App. Br. 8–25; Reply Br. 2–5) the Examiner's rejection of claim 7 under 35 U.S.C. § 101 as being directed to patent-

³ We note the §§ 102 and 103 rejections of claims 7–10, 12–16, 18, and 19 were withdrawn by the Examiner. Final Act. 3.

⁴ "Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately." 37 C.F.R. § 41.37(c)(1)(iv). In addition, when Appellants do not separately argue the patentability of dependent claims, the claims stand or fall with the claims from which they depend. *In re King*, 801 F.2d 1324, 1325 (Fed. Cir. 1986).

ineligible subject matter is in error. These contentions present us with the following issue:

Under our governing case law concerning 35 U.S.C. § 101, did the Examiner err in concluding claim 7 is directed to a judicial exception, i.e., an abstract idea, specifically, the abstract idea of using categories to organize, store, and transmit information, without significantly more, and thus is patent-ineligible under § 101?

ANALYSIS

In reaching this decision, we consider all evidence presented and all arguments actually made by Appellants. To the extent Appellants have not advanced separate, substantive arguments for particular claims, or other issues, such arguments are waived. 37 C.F.R. § 41.37(c)(1)(iv).

We disagree with Appellants' arguments with respect to claims 7–19 and 40–46 and, unless otherwise noted, we incorporate by reference herein and adopt as our own: (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken, and (2) the reasons and rebuttals set forth in the Examiner's Answer in response to Appellants' arguments. We highlight and address specific findings and arguments regarding claim 7 for emphasis as follows.

Mayo/Alice Framework

Section 101 provides that anyone who "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. 35 U.S.C. § 101. The Supreme Court has repeatedly emphasized that patent protection should not extend to claims that monopolize "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).

Accordingly, laws of nature, natural phenomena, and abstract ideas are not patent-eligible subject matter. *Id.*

The Supreme Court's two-part *Mayo/Alice* framework guides us in distinguishing between patent claims that impermissibly claim the "building blocks of human ingenuity" and those that "integrate the building blocks into something more." *Id.* (internal quotation marks, citation, and bracketing omitted). First, we "determine whether the claims at issue are directed to [a] patent-ineligible concept[]." *Id.* at 2355. If so, 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." *Id.* at 2357 (quoting *Mayo*, 566 U.S. at 72, 79). While the two steps of the *Alice* framework are related, the "Supreme Court's formulation makes clear that the first-stage filter is a meaningful one, sometimes ending the § 101 inquiry." *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016). We note the Supreme Court "has not established a definitive rule to determine what constitutes an 'abstract idea'" for the purposes of step one. *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1334 (Fed. Cir. 2016) (citing *Alice*, 134 S. Ct at 2357).

In *Enfish*, our reviewing court held claims directed to a self-referential logical model for a computer database patent-eligible under step one of *Alice*. *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1330 (Fed. Cir. 2016). The disclosed technique enabled faster searching and more effective storage of data than previous methods. *Id.* at 1333. The court

found the claims directed to "a specific improvement to the way computers operate, embodied in the self-referential table" (*id.* at 1336), and explained that the claims are "not simply directed to *any* form of storing tabular data, but instead are specifically directed to a *self-referential table* for a computer database" that functions differently than conventional databases. *Id.* at 1337.

However, our reviewing court has held claims ineligible as directed to an abstract idea when they merely collect electronic information, display information, or embody mental processes that could be performed by humans. *Elec. Power Grp.*, 830 F.3d at 1353–54 (collecting cases). At the same time, "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. Abstract ideas may include, but are not limited to, fundamental economic practices, methods of organizing human activities, an idea of itself, and mathematical formulas or relationships. *Alice* 134 S. Ct. at 2355–57. Under this guidance, we must therefore ensure at step one that we articulate what the claims are directed to with enough specificity to ensure the step one inquiry is meaningful. *Id.* at 2354 ("[W]e tread carefully in construing this exclusionary principle lest it swallow all of patent law.").

Under the "abstract idea" step we must evaluate "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) (internal citation omitted). If the claims are not directed to a patent-ineligible concept, the inquiry ends. *See Visual Memory LLC v. NVIDIA Corp.*, 867 F.3d 1253, 1262 (Fed. Cir. 2017). If the concept is directed to a patent-ineligible concept, we proceed to the "inventive concept" step. For that second step

we must "look with more specificity at what the claim elements add, in order to determine 'whether they identify an 'inventive concept' in the application of the ineligible subject matter' to which the claim is directed." *Affinity Labs*, 838 F.3d at 1258 (quoting *Elec. Power Grp.*, 830 F.3d at 1353).

Mayo/Alice Step 1 — Abstract Idea

The Examiner concludes "[c]laims 7–19 and 40–46 are directed to the abstract idea of using categories to organize, store, and transmit information" (Final Act. 4), and further concludes "[t]he claims are directed to an abstract idea of processing payment transactions." Ans. 3.

Appellants contend the Examiner (1) failed to establish a *prima facie* case that the claims, as a whole, are directed to an abstract idea "because key technical elements were omitted without the required explanation" (App. Br. 8), and (2) "the Final Office Action acknowledges after thorough search and examination that key technical elements are novel and nonobvious but concludes, again without the required explanation, that such claims do not constitute significantly more under the Mayo framework." *Id.*

Appellants further state "Claim 7 recites three-device system that employs a specific security protocol for providing consumer identifying data associated with the consumer device to the merchant device" (App. Br. 10), and allege the Examiner has misapplied step one of the *Mayo/Alice* test for determining patentability. App. Br. 11.

More specifically, Appellants argue:

Here, while Appellant's claims **involve** "using categories to organize, store, and transmit information," this does not mean that the character of the claims as a whole, considered in light of the specification, can be considered to be directed to

"using categories to organize, store, and transmit information," as alleged in the Final Office Action When Appellant's claims are considered as a whole, they are directed to a security protocol for reliably providing sensitive data (consumer identifying) to a merchant device by employing a central system, which is not an abstract idea.

App. Br. 11–12.⁵

Appellants argue, "[c]laim 7 is directed to secure consumer device identification for a merchant device by leveraging a central system that serves as an intermediary for secure data transmissions, and improved connectivity during validation by leveraging the merchant device as an intermediary for communications between the consumer device and networked device" (App. Br. 13), and invoke the Federal Circuit's holding in *Enfish*.

The Federal Circuit in *Enfish* also looked to the specification to determine what the claims were directed to as a whole, and in particular to the invention's benefits. *Enfish*, at 15. Appellant's specification also discusses the benefits of the claimed invention. As discussed in at least paragraph [0054] and [0113] of the specification-as-filed, the recited "wallet identifying tokens" associated with "consumer identifying data" provide "a reference to consumer data available from the central system." As such, a wallet identifying token may be sent to the merchant device [by the consumer device] in place of actual consumer data that may be readily stolen by an unauthorized device" that intercepts the communications between the consumer device and merchant device. Instead of relying on the merchant device and consumer device to share the consumer identifying data directly with each other, the central system acts as an

⁵ Appellants also allege, "[t]hus, as in *Enfish*, the Final Office Action characterized the claims at a high level of abstraction untethered to the claim language when asserting that the claims were directed to 'using categories to organize, store, and transmit information.'" App. Br. 12.

intermediary to send the consumer identifying data associated with the wallet identifying data to the merchant device when the wallet identifying data is received from the consumer device via the merchant device.

App. Br. 13–14. "For at least these reasons, Appellant's claims include elements that when considered as a whole, and in light of the specification, are different from merely 'using categories to organize, store, and transmit information.'" App. Br. 14.

Under the "abstract idea" step we must evaluate "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*, 838 F.3d at 1257 (citation omitted).

Turning to the claimed invention, claim 7 recites "[a] payment processing system" that includes "a networked device comprising processing circuitry configured to:"

- (a) "generate a plurality of wallet identifying tokens";
- (b) "send the plurality of wallet identifying tokens to a consumer device;"
- (c) "receive . . . a first wallet identifying token;"
- (d) "validate the first wallet identifying token";
- (e) "send the consumer identifying data associated with the first wallet identifying token to the merchant device if the first wallet identifying token was validated."

App. Br. 26, Claims App'x.

Under step one, we agree with the Examiner that the inventions claimed in claim 7 is directed to the abstract idea of using categories to organize, store, and transmit information for processing payment transactions, which we also conclude is a method of organizing human

activity or, alternatively, "economic practices in which monetary transactions between people are managed [because t]he concept described in claim 7 is not meaningfully different than those economic concepts found by the courts to be abstract ideas." Ans. 4.

As the Specification discloses, "[e]mbodiments of the invention relate, generally, to token management for secure transactions using a consumer device." Spec. ¶ 2.

More specifically, embodiments provided herein may include a payment system that may be implemented to provide merchants (e.g., those that have "brick-and-mortar" retail space and/or online ordering storefronts) a way to receive payment from a consumer based on data sent by a consumer's mobile device and without the consumer having to present a physical payment instrument, identification, or currency directly to the merchant. Spec. ¶ 4.⁶

We find this type of activity, i.e., processing or facilitating payment transactions, for example, includes longstanding conduct that existed well before the advent of computers and the Internet, and could be carried out by a human with pen and paper. *See CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1375 (Fed. Cir. 2011) ("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*.").⁷

⁶ *See also* Spec. 59 ("Abstract")("Systems and related methods for facilitating payments via a consumer device carried by a consumer are discussed herein.").

⁷ *CyberSource* further guides that "a method that can be performed by human thought alone is merely an abstract idea and is not patent-eligible under § 101." *CyberSource*, 654 F.3d at 1373.

Our reviewing court has previously held other patent claims ineligible for reciting similar abstract concepts. For example, while the Supreme Court has provided additional guidance on the § 101 analysis since *CyberSource* in cases like *Mayo* and *Alice*, they continue to "treat[] analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, as essentially mental processes within the abstract-idea category." *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1146–47 (Fed. Cir. 2016) (alteration in original) (quoting *Elec. Power Grp.*, 830 F.3d at 1354).

In addition, our reviewing court has concluded that abstract ideas include the concepts of collecting data, recognizing certain data within the collected data set, and storing the data in memory. *Content Extraction & Transmission LLC v. Wells Fargo Bank, N.A.*, 776 F.3d 1343, 1347 (Fed. Cir. 2014). Additionally, the collection of information and analysis of information (e.g., recognizing certain data within the dataset) are also abstract ideas. *Elec. Power*, 830 F.3d at 1353–54 (collecting information and "analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, [are] essentially mental processes within the abstract-idea category"). Similarly, "collecting, displaying, and manipulating data" is an abstract idea. *Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1340 (Fed. Cir. 2017). Further, a process that employs mathematical algorithms to manipulate existing information to generate additional information is abstract. *Digitech Image Techs., LLC v. Elec. for Imaging, Inc.*, 758 F.3d 1344, 1351 (Fed. Cir. 2014). Also, more recently, our reviewing court has also concluded that

acts of parsing, comparing, storing, and editing data are abstract ideas.
Berkheimer v. HP Inc., 881 F.3d 1360, 1367 (Fed. Cir. 2018).

In the Reply Brief (2), Appellants allege the claims are not directed to the abstract idea of processing payment transactions in light of the Federal Circuit's holding in *McRO*, i.e., "[t]he Examiner has repeatedly failed to consider the claims as a whole. Specifically, independent claims 7 and 40 recite a specific process to achieve a particular result" because of the claimed steps of independent claim 7. *Id.*

This 6 steps [sic] process defines a particular ordered combination of rules to achieve the result of a merchant device securely receiving consumer identifying data. The claims do not merely recite the result of a merchant device securely receiving consumer identifying data, as such would be an abstract idea as identified by the Federal Circuit in *MCRO*.

Reply Br. 3.

Appellants imply the claims are similar to those held patent-eligible in *McRO*. Reply Br. 2–3. Although Appellants quote each of the steps recited in claims 7 and 40 (*id.*), Appellants do not, however, identify how claim 7 improves an existing technological process, aside from alleging "[t]he claims do not merely recite the result of a merchant device securely receiving consumer identifying data." Reply Br. 3; *see Alice*, 134 S. Ct. at 2358 (explaining that "the claims in *Diehr* were patent eligible because they improved an existing technological process"). Rather, claim 7 concerns a "payment processing system" that exchanges various types of data. App. Br. 26, Claims App'x. In addition, Appellants do not direct us to any evidence that the claimed token generation and validation correspond to unconventional rules.

Therefore, in agreement with the Examiner, we conclude claim 1 involves nothing more than using categories to organize, store, and transmit information for processing payment transactions, without any particular inventive technology — an abstract idea. *See Elec. Power Grp.*, 830 F.3d at 1354.⁸

Accordingly, on this record, and under step one of *Alice*, we agree with the Examiner's conclusion the claims are directed to an abstract idea.

Mayo/Alice Step 2—Inventive Concept

If the claims are directed to a patent-ineligible concept, as we conclude above, we proceed to the "inventive concept" step. For that step we must "look with more specificity at what the claim elements add, in order to determine 'whether they identify an 'inventive concept' in the application of the ineligible subject matter' to which the claim is directed." *Affinity Labs*, 838 F.3d at 1258 (quoting *Elec. Power Grp.*, 830 F.3d at 1353).

In applying step two of the *Alice* analysis, our reviewing court guides we must "determine whether the claims do significantly more than simply describe [the] abstract method" and thus transform the abstract idea into patentable subject matter. *Ultramarcial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014). We look to see whether there are any "additional features" in the claims that constitute an "inventive concept," thereby rendering the claims eligible for patenting even if they are directed to an abstract idea. *Alice*, 134 S. Ct. at 2357. Those "additional features" must be

⁸ Merely automating previously manual processing by using computers does not qualify as an eligibility-rejection-defeating improvement. *Credit Acceptance Corp. v. Westlake Servs.*, 859 F.3d 1044 (Fed. Cir. 2017).

more than "well-understood, routine, conventional activity." *Mayo*, 566 U.S. at 79.

Evaluating representative claim 7 under *step 2* of the *Alice* analysis, we agree with the Examiner that it lacks an inventive concept that transforms the abstract idea of using categories to organize, store, and transmit information for processing payment transactions into a patent-eligible application of that abstract idea. *See* Ans. 4–10.

The Examiner concludes:

In the instant claims, the modification of processing payment transactions based on token management for secure transactions using a consumer device is interpreted as the processing [of] payment transactions between two entities through the use of some unspecified generic computer processor in a generic manner.

Generating, identifying and validating tokens are routine, conventional and well understood computer functions applied to the abstract idea. The limitations of sending, receiving data are not interpreted as significantly more, rather routine, well understood and conventional steps of transmitting data over a network.

Ans. 5–6.

The Examiner further concludes:

Tokenization process is a process where a sensitive data element is substituted with a non-sensitive equivalent. Tokens are references that map back to original data through a tokenization system or scheme. The tokenization system can generate and detokenize the generated tokens based on a particular scheme to redeem the sensitive or secured data. Therefore [g]enerating, identifying and validating tokens is routine, conventional and well understood method of securing data and part of the process (idea) of securing data itself.

Therefore generating, identifying and validating tokens are routine, conventional and well understood computer functions applied to the abstract idea.

Ans. 6. We agree with the Examiner's factual findings and conclusions.

Moreover, Appellants acknowledge that tokenization is known. Reply Br. 4.

We note the patent eligibility inquiry may contain underlying issues of fact. *Mortg. Grader, Inc. v. First Choice Loan Servs. Inc.*, 811 F.3d 1314, 1325 (Fed. Cir. 2016). In particular, "[t]he question of whether a claim element or combination of elements is well-understood, routine and conventional to a skilled artisan in the relevant field is a question of fact." *Berkheimer*, 881 F.3d at 1368.

As evidence of the conventional nature of the claimed network components and processes, we note the Appellants' Specification in paragraphs 166 through 180. For example:

[00166] Fig. 7 shows system 700 including an example network architecture, which may include one or more devices and sub-systems that are configured to implement some embodiments discussed herein. For example, system 700 may include central system 702, which can include, for example, central server 704 and central database 706, among other things (not shown). Central server 704 may be any suitable network server, a plurality of networked servers, and/or other type of processing device. Central database 706 may be any suitable network database configured to store information that may be used to facilitate the techniques as discussed herein. In this regard, system 702 may include, for example, at least one backend data server, network database, cloud computing device, among other things.

[00167] Central system 702 may be coupled to one or more merchant devices (e.g., merchant device 710) via network 708. In this regard, network 708 may include any wired or wireless communication network including, for example, a wired or

wireless local area network (LAN), personal area network (PAN), metropolitan area network (MAN), wide area network (WAN), mobile broadband network, or the like, as well as any hardware, software and/or firmware required to implement it (such as, e.g., network routers, etc.). For example, network 708 may include a cellular telephone, an 802.11, 802.16, 802.20, and/or WiMax network. Further, the network 708 may include a public network, such as the Internet, a private network, such as an intranet, or combinations thereof, and may utilize a variety of networking protocols now available or later developed including, but not limited to TCP/IP based networking protocols.

* * *

[00174] Processor 802 may, for example, be embodied as various means including one or more microprocessors with accompanying digital signal processor(s), one or more processor(s) without an accompanying digital signal processor, one or more coprocessors, one or more multicore processors, one or more controllers, processing circuitry, one or more computers, various other processing elements including integrated circuits such as, for example, an ASIC (application specific integrated circuit) or FPGA (field programmable gate array), or some combination thereof. Accordingly, although illustrated in Fig. 28 as a single processor, in some embodiments, processor 802 comprises a plurality of processors. The plurality of processors may be embodied on a single computing device or may be distributed across a plurality of computing devices collectively configured to function as circuitry 800. The plurality of processors may be in operative communication with each other and may be collectively configured to perform one or more functionalities of circuitry 800 as described herein. In an example embodiment, processor 802 is configured to execute instructions stored in memory 804 or otherwise accessible to processor 802. These instructions, when executed by processor 802, may cause circuitry 800 to perform one or more of the functionalities of circuitry 800 as described herein.

[00175] Whether configured by hardware, firmware/software methods, or by a combination thereof, processor 802 may comprise an entity capable of performing operations according to embodiments of the present invention while configured accordingly. Thus, for example, when processor 802 is embodied as an ASIC, FPGA or the like, processor 802 may comprise specifically configured hardware for conducting one or more operations described herein. As another example, when processor 802 is embodied as an executor of instructions, such as may be stored in memory 804, the instructions may specifically configure processor 802 to perform one or more algorithms and operations described herein.

[00176] Memory 804 may comprise, for example, volatile memory, non-volatile memory, or some combination thereof
.....

Spec. ¶¶ 166–167, 174–176.

We agree with the Examiner that the claim limitations may be broadly but reasonably construed as reciting conventional computer components and techniques implementing the functions in claim 7, particularly in light of Appellants' Specification, as quoted above.⁹

With respect to the *Step 2* analysis, we agree with the Examiner because, as in *Alice*, the recitation of either "[a] payment processing system comprising . . . a networked device comprising processing circuitry

⁹ During prosecution, claims must be given their broadest reasonable interpretation when reading claim language in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). Under this standard, we interpret claim terms using "the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant's specification." *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997).

configured to [generate, receive, and validate wallet identifying tokens]" (claim 7), or "[a] machine-implemented method, comprising, by processing circuitry of a networked device . . . [generating, sending, receiving, and validating wallet identifying tokens]" (claim 40) is simply not enough to transform the patent-ineligible abstract idea here into a patent-eligible invention. *See Alice*, 134 S. Ct. at 2357 ("[C]laims, which merely require generic computer implementation, fail to transform [an] abstract idea into a patent-eligible invention.").¹⁰

Accordingly, based upon the findings above, on this record, we are not persuaded of error in the Examiner's conclusion that the appealed claims are directed to patent-ineligible subject matter. Therefore, we sustain the Examiner's § 101 rejection of independent claim 7, and grouped claims 8–19 and 40–46, not argued separately, and which fall therewith. *See Claim Grouping, supra*.

¹⁰ Appellants merely allege:

Although general tokenization may be known, the functionality of the token (e.g. associated with a private key), the process used to securely transmit the tokens (e.g. sent by a networked device to a client, then returned to the network device via a merchant device), and the result of the validation of the token (e.g. sending from the networked device information associated with the token to the merchant device) provide a non-conventional and non-generic use and arrangement of the ordinary practiced tokenization. The claimed process provides for secure sharing of consumer identifying data with merchant devices.

Reply Br. 4.

REPLY BRIEF

To the extent Appellants *may* advance new arguments in the Reply Brief (Reply Br. 2–5) not in response to a shift in the Examiner's position in the Answer, we note arguments raised in a Reply Brief that were not raised in the Appeal Brief or are not responsive to arguments raised in the Examiner's Answer will not be considered except for good cause (*see* 37 C.F.R. § 41.41(b)(2)), which Appellants have not shown.

CONCLUSION

The Examiner did not err with respect to the patent-ineligible subject matter rejection of claims 7–19 and 40–46 under 35 U.S.C. § 101, and we sustain the rejection.

DECISION

We affirm the Examiner's decision rejecting claims 7–19 and 40–46.

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