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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* HANS ELIAS, THOMAS DAVID JAMES AICKEN,  
and MARLON JAMES DUBLIN

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Appeal 2017-004519  
Application 13/943,999<sup>1</sup>  
Technology Center 3700

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Before STEVEN D.A. McCARTHY, MICHELLE R. OSINSKI, and  
ERIC C. JESCHKE, *Administrative Patent Judges*.

JESCHKE, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant seeks review under 35 U.S.C. § 134(a) of the Examiner's decision, as set forth in the Final Office Action dated September 30, 2015, rejecting claims 1–17 under 35 U.S.C. § 101 as directed to patent-ineligible subject matter. We have jurisdiction under 35 U.S.C. § 6(b).

*We affirm.*

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<sup>1</sup> Gamesys Ltd. (“Appellant”) is the applicant as provided in 37 C.F.R. § 1.46 and is identified as the real party in interest. Appeal Br. 3.

## BACKGROUND

The disclosed subject matter relates to “[s]ystems, methods, and articles of manufacture [that] provide for associating game symbols.” Spec., Abstract. Claims 1, 13, and 14 are independent. Claim 1 is reproduced below:

1. A method, comprising:

determining, by a processing device, a plurality of symbols indicative of an outcome of a slot-style game, each symbol of the plurality of symbols being represented at a particular position on one of a plurality of slot reels of a game output interface;

determining, by the processing device and based on a first paytable of the slot-style game and based on the positions of the plurality of symbols indicative of the outcome, a first result associated with the outcome of the slot-style game;

determining, by the processing device, a first primary connecting symbol at a first particular position on one of the plurality of slot reels;

determining, by the processing device, a second primary connecting symbol at a second particular position on one of the plurality of slot reels;

causing, by the processing device, an outputting of an indication of a secondary connecting symbol at a third particular position disposed between the first and second particular positions, the secondary connecting symbol at least one of: (i) being overlaid on top of an original symbol occurring at the third particular position, and (ii) replacing the original symbol occurring at the third particular position;

determining, by the processing device and based on a second payable of the slotstyle game and based on the particular positions of the first and second primary connecting symbols and the secondary connecting symbol, a second result associated with the outcome of the slot-style game; and

causing, by the processing device generating an electronic signal transmitted to an electronic display device, an outputting of at least one indication of (i) the first result, and (ii) the second result.

## DISCUSSION

The Supreme Court has established “a framework 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. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2355 (2014) (citing *Mayo Collaborative Servs. v. Prometheus Labs, Inc.*, 132 S. Ct. 1289, 1294 (2012)). Under the *Alice* framework, we first “determine whether the claims at issue are directed to one of those patent-ineligible concepts”—i.e., a law of nature, a natural phenomenon, or an abstract idea. *Id.* If so, we secondly “consider the elements of each claim both individually and ‘as an ordered combination’ to determine whether the additional elements ‘transform the nature of the claim’ into a patent-eligible application.” *Id.* (quoting *Mayo*, 132 S. Ct. at 1298, 1297). The Supreme Court described the second step as “a search for an ‘inventive concept’—i.e., an element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.’” *Id.* (alteration in original) (quoting *Mayo*, 132 S. Ct. at 1294).

Appellant presents certain arguments regarding all claims as a group. *See, e.g.*, Appeal Br. 19–21. Appellant also presents arguments based on certain language specific to each of the three independent claims. *See, e.g.*, Reply Br. 2–6. Appellant does not separately argue any dependent claims.

#### A. Step One

Regarding Step One of the *Alice* framework, the Examiner states that “the claims are directed largely to a method of providing a wagering game in which players wager on the random outcome of slot reels, and wherein a payable determines whether the player wins an award.” Ans. 4–5. The Examiner also states: “As discussed in [*In re Smith*, 815 F.3d 816 (Fed. Cir. 2016)], in which a method of conducting a wagering game was considered abstract, it is determined that the instant claims are directed to a wagering game, comparing to ‘fundamental economic practices’ found abstract by the Supreme Court.” *Id.* at 5; *see also* Final Act. 2 (“Claim(s) 1–17 is/are directed to a game, considered to be an abstract idea.”).

First, Appellant asserts error based on the Examiner’s alleged “reliance on the MPEP for specific guidance with respect to the dynamic area of § 101 jurisprudence.” Appeal Br. 20; *see also id.* at 19 (“MPEP §2106 does *not* provide guidance regarding ‘implementation of an electronic game’, much less ‘explicitly define[]’ such subject matter as ‘an abstract idea’” (quoting Final Act. 3)).

In the Answer, the Examiner states to have “withdrawn the remarks, arguments, and other[] references to MPEP §2106” and states that, “therefore, Appellant’s arguments regarding such are moot.” Ans. 4.

As an initial matter, we do not view the Examiner’s position as to Step One as relying *solely* on the MPEP. For example, the Examiner’s discussion

of the MPEP highlighted by Appellant is in the “Response to Arguments” section *after* the rejection at issue. *See* Final Act. 2–4. Moreover, based on the Examiner’s withdrawal of any reference to or reliance on the MPEP, this argument does not apprise us of error in the rejection.

Second, Appellant argues that precedential case law demonstrates that the claims at issue are not directed to an abstract idea. Appellant contends that “*Gottschalk*[ *v. Benson*, 409 U.S. 63 (1972),] identified a distinction between basic and generalized programming via ‘algorithms’ and specific applications of such algorithms into ‘programs’” with “[t]he former being identified as nonpatentable abstract ideas, and the latter being within the realm of patentability.” Appeal Br. 20. In addition, Appellant quotes from *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016), which provides: “Software can make non-abstract improvements to computer technology just as hardware improvements can, and sometimes the improvements can be accomplished through either route.” Appeal Br. 21. According to Appellant, “[i]n this case, where the claims are directed to improvements in software programs or applications, such subject matter clearly being within the purview of the patent laws in accordance with the most recent guidance and case law, the Examiner’s refusal to undertake an analysis under Step [One] is improper.” *Id.*

In response, the Examiner:

does not consider a game with a different set of rules to be an improvement to computer technology, as, while it could be argued that a game with a set of rules not found in previous games could be seen as a different and “improved” game, this has no bearing on the *Enfish* decision, as the computer itself is not being improved as a result of the game.

Ans. 6.

In reply, Appellant argues that, “[i]n accordance with *McRO[, Inc. v. Bandai Namco Games Am. Inc.]*, 837 F.3d 1299 (Fed. Cir. 2016),] it is believed that the claims being appealed should be found to not be abstract.” Reply Br. 11. According to Appellant, the claims here “provide a new slot-style game mechani[sm] that improves the ability of an electric gaming system to generate revenue (particularly in wagering-enabled jurisdictions).” *Id.* Appellant argues that, in *McRO*, “the ‘improvement’ to the functioning of the computer was not a hardware improvement.” *Id.* at 10.

As an initial matter, we do not agree with Appellant that the Examiner “refus[ed] to undertake an analysis” under Step One. Appeal Br. 21; *see also id.* at 19 (“The Examiner relies upon this reasoning to skip Step [One] entirely, and proceeds directly to Step [Two].”). As noted above, in both the Final Office Action and Answer, the Examiner discussed the position that the claims are directed to an abstract idea. *See* Final Act. 2–4; Ans. 4–6.

As to the alleged improvement identified by Appellant—improved ability to generate revenue (Reply Br. 11)—we first note that Appellant did not raise this position until the Reply Brief, and thus we have no response from the Examiner on the issue. *See* 37 C.F.R. § 41.41(b)(2). In addition, Appellant provides no evidence to support this alleged improvement. *In re Pearson*, 494 F.2d 1399, 1405 (CCPA 1974) (“Attorney’s argument in a brief cannot take the place of evidence.”). Moreover, we are not persuaded that the alleged improvement—even if assumed to exist—is sufficiently similar to the improvement at issue in *McRO*.

There, the Federal Circuit stated that the representative claim was “focused on a *specific asserted improvement in computer animation*, i.e., the automatic use of rules of a particular type” and also stated that “[i]t is the

incorporation of the claimed rules, not the use of the computer, that ‘*improved [the] existing technological process*’ by allowing the automation of further tasks.” *McRO*, 837 F.3d at 1314 (quoting *Alice*, 134 S. Ct. at 2358) (emphasis added). Thus, in *McRO*, it was not the mere presence of the “claimed rules” that led to patent eligibility; rather, it was that “[t]he specific, claimed features of these rules allow for the improvement realized by the invention” that indicated that the claims were not directed to an abstract idea. *See id.* at 1313; *see also id.* at 1316 (“The claim uses the limited rules in a process specifically designed to achieve an improved technological result in conventional industry practice. Claim 1 of the ’576 patent, therefore, is not directed to an abstract idea.” (internal citation omitted and emphasis added)).

In contrast, here, Appellant identifies an alleged *benefit* from use of the claimed technology but has not identified an “improved *technological result*” generated by the claims. *Cf. McRO*, 837 F.3d at 1316 (emphasis added). Instead, the asserted improved ability to generate revenue is merely the result of an “improved” abstract idea—i.e., one that is “newer, more interesting, engaging, or entertaining” than games already in existence. Spec. ¶ 3 (“Game play and gaming tournaments for various types of games such as online, offline, skill-based, games of chance, and games of mixed skill and chance are a continued source of entertainment to game players, and are often a source of great revenue for gaming companies. Accordingly, there is a desire to provide players with increasingly newer, more interesting, engaging, or entertaining games.”).

This is not the type of improvement at issue in *McRO*. *See McRO*, 837 F.3d at 1314 (“We therefore look to whether the claims in these patents



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.*” (emphasis added)); *see also Enfish*, 822 F.3d at 1335–36 (stating that “the first step in the *Alice* inquiry in this case asks whether the focus of the claims is on the specific asserted improvement in computer capabilities (i.e., the self-referential table for a computer database) or, instead, on a process that qualifies as an ‘abstract idea’ for which computers are invoked merely as a tool”). Here, we agree with the Examiner that “the claims do nothing to improve the functionality of the computer and instead, only serve as a vehicle to implement the abstract ideas on a computer.” Ans. 7.

As to the discussion regarding *Gottschalk* (Appeal Br. 20–21), to the extent that Appellant takes the position (as phrased by the Examiner) that “because the claims [at issue] are not directed to an algorithm per se, the claims must be patentable” (Ans. 4), we agree that the decision in *Gottschalk* does not stand for that proposition. *Cf.* Appeal Br. 20 (stating that *Gottschalk* “describes . . . that specific applications of algorithms, *i.e.*, ‘computer programs’, *are patentable*” (emphasis added)). The *Gottschalk* Court did *not* state that *all* computer programs are patent eligible (as asserted by Appellant (*id.*)); instead, the Court highlighted the need for Congress to address the issue (*see Gottschalk*, 409 U.S. at 72–73).

We turn now to the Federal Circuit’s decision in *In re Smith*, which we consider instructive as to the analysis of Step One here. *See* Ans. 5–6 (discussing *In re Smith*). There, the Federal Circuit addressed a rejection, under 35 U.S.C. § 101, of claims reciting a “method of conducting a wagering game.” *In re Smith*, 815 F.3d at 817. Addressing Step One, the

court stated that the “claimed ‘method of conducting a wagering game’ is drawn to an abstract idea much like *Alice*’s method of exchanging financial obligations and *Bilski*’s method of hedging risk” and concluded that “the rejected claims, describing a set of rules for a game, are drawn to an abstract idea.” *Id.* at 819; *see also Bilski v. Kappos*, 561 U.S. 593 (2010). Based on the decisions in *In re Smith*, *Alice*, and *Bilski*—all discussed by the Examiner here (Ans. 5)—we see no error in the determination that the subject matter of providing a wagering game is an abstract idea. *See Enfish*, 822 F.3d at 1334 (stating that our reviewing courts “have found it sufficient to compare claims at issue to those claims already found to be directed to an abstract idea in previous cases”).

Appellant argues that the claims at issue here “are directed to an electronic slot-style game” and are “more similar to claims 20–21 of the *In re Smith* application (12/912410)[,] which were electronic/video game versions of the inventive concept that were indicated as ALLOWABLE by the Office in that case[,]” as opposed to “a physical card game (as was the subject of the appeal in *In re Smith*).” Reply Br. 9.

This argument does not apprise us of error. In U.S. Patent Application 12/912,410 (which was the subject of *In re Smith*), the examiner allowed claims 20 and 21 because “the recitation of ‘a video gaming system comprising: a processor, a video display and a player input controls clearly recite a machine” and, according to the examiner at that time, such claim language “clearly avoids a 101 non-statutory rejection.” *See* Final Office Action at 3 (¶ 7) (U.S. Patent Application 12/912,410) (dated Nov. 8, 2011). For the reasons discussed below (*see* § B), under the current state of the law, we agree with the Examiner that the similar recited elements in the claims

here—e.g., a “processing device” and an “electronic display device”—do *not* transform the claims into patent eligible subject matter.

Moreover, we are also not apprised of error based on Appellant’s argument that the Examiner inaccurately interpreted *In re Smith* as standing for the proposition that “all ‘wagering games’ are ‘abstract’ and accordingly unpatentable.” Reply Br. 9. The Examiner here did not make such a broad pronouncement regarding the holding of *In re Smith*; nor does the Examiner’s position *depend* on such a broad view of the holding of that decision. Further, for the reasons above, we agree with the Examiner that the subject matter of the claims at issue here are sufficiently similar to those in *In re Smith* to support the Examiner’s position as to Step One.

Third, Appellant notes “that the updated guidance specifically cautions that examiners ‘should not overgeneralize the claim or simplify it into its “gist” or core principles, when identifying a concept as a judicial exception.’” Reply Br. 11 (quoting Memorandum from Robert W. Bahr, Deputy Commissioner for Patent Examination Policy to the Patent Examiner Corps, at 2 (Nov. 2, 2016), <https://www.uspto.gov/sites/default/files/documents/McRo-Bascom-Memo.pdf> (last visited Oct. 4, 2018)). According to Appellant, “that is exactly what the Examiner has done.” *Id.* Appellant argues that “[t]he claims being appealed are not merely directed to a game, nor a wagering game, nor even a slot-style game, but a particular implementation of a slot-style game that resolves multiple game results as-claimed.” *Id.*

For the reasons discussed above, reviewing the argument here against the statute and case law, we determine that the Examiner’s identification of the abstract idea at issue properly reflects “the ‘focus’ of the claims, their

‘character as a whole.’” *Elec. Power Grp. LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016) (quoting *Enfish*, 822 F.3d at 1335–36 and *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015)).

For these reasons, we are not apprised of error in the Examiner’s determination that the claims here are directed to an abstract idea.<sup>2</sup>

### B. Step Two

Regarding Step Two of the *Alice* framework, the Examiner stated:

The claim(s) does/do not include additional elements that are sufficient to amount to significantly more than the judicial exception because they amount to no more than implementing the abstract idea on a general purpose computer.

As the claims are directed to a slot-style game, rather than a slot machine or similar, the underlying structure upon which the abstract idea is implemented cannot be construed explicitly as more than a general purpose computer. There are no limitations that define any special-purpose hardware, as the claims are directed to simply processing and memory devices.

Final Act. 2. The Examiner stated that “the limitations not considered to be abstract ideas are a processing device and memory device,” but the Examiner also stated that the “processing and memory devices [are] considered generic.” *Id.* at 3. According to the Examiner, “[t]he

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<sup>2</sup> We view the Examiner’s positions that the claimed “symbols could be drawn on paper strips” (Ans. 5) and that the “processing device may feasibly be a human being” (Final Act. 2–3) as alternative bases as to why the claims are directed to an abstract idea. *See also* Ans. 5–6 (discussing *Planet Bingo, LLC v. VKGS LLC*, 576 Fed. Appx. 1005 (Fed. Cir. 2014)). Because we do not affirm the rejection on these alternative bases, we do not address Appellant’s related arguments. *See, e.g.*, Reply Br. 2–7, 9–10 (addressing *Planet Bingo*).

[S]pecification explicitly defines a game as one played by a personal computer (PC), par. [0007].” *Id.*

First, Appellant argues that “[w]ithout having properly identified which portions or concepts in the pending claims are directed to an ‘abstract idea’, it is impossible for the Examiner to have set forth on the record a proper legal analysis under Step [Two] of the claims to determine if something more than the abstract idea exists.” Appeal Br. 23.

For the reasons discussed above (*see* § A), we do not agree that the Examiner failed to properly perform the analysis under Step One. Thus, with this argument, Appellant does not apprise us of error in the rejection.

Second, Appellant argues that “the Examiner’s search for unique or ‘special-purpose hardware’ as the only possible vehicles for achieving ‘something more’ unduly restricts the Step [Two] analysis and improperly precludes whole classes of inventions from the patent system.” Appeal Br. 23 (quoting Final Act. 2). Appellant quotes a passage from *Enfish* that provides (among other aspects): “Much of the advancement made in computer technology consists of improvements to software that, by their very nature, may not be defined by particular physical features but rather by logical structures and processes.” *Enfish*, 822 F.3d at 1339, *quoted at* Appeal Br. 23–24; *see also* Reply Br. 8 (arguing that the Examiner limited the analysis under Step Two to hardware), 9 (asserting that “the Examiner has focused entirely upon whether some new hardware exists to meet the ‘something more’ portion of the test”). Although the Examiner did state that the claims recite “no limitations that define any special-purpose hardware” (Final Act. 2), we do not view that as somehow precluding Appellant from

identifying *other* aspects recited in the claims that (whether or not based in hardware) transform the claims into patent-eligible subject matter.

As noted above, the Examiner here takes the position that the recited “processing device,” “electronic display device,” and “memory device” (for example) are aspects of a general purpose computer. *See* Final Act. 2–3; Ans. 6–7. Appellant does not challenge these findings, but does argue that “[w]hile the term ‘general purpose computer’ remains an elusive construct, it is not believed that any computer programmed specifically to implement the novel slot-style game as claimed should be considered ‘general purpose.’” Reply Br. 7. Although Appellant does not cite to legal support for this position, a similar concept was identified in the Federal Circuit’s 1994 en banc decision in *In re Alappat*:

Alappat admits that claim 15 would read on a general purpose computer programmed to carry out the claimed invention, but argues that this alone also does not justify holding claim 15 unpatentable as directed to nonstatutory subject matter. We agree. We have held that such programming creates a new machine, because a general purpose computer in effect becomes a special purpose computer once it is programmed to perform particular functions pursuant to instructions from program software.

33 F.3d 1526, 1545 (Fed. Cir. 1994). More recently, in *Eon Corp. v. AT&T Mobility LLC*, 785 F.3d 616, 623 (Fed. Cir. 2015), the Federal Circuit explicitly stated that “*Alappat* has been superseded” by the Supreme Court’s decisions in *Bilski* and *Alice*. And, as stated in the *Alice* decision, “the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention.” *Alice*, 134 S. Ct. at 2358.

Referencing the Examiner’s citation to paragraph 7 of the Specification, Appellant argues that “the hardware via which the game is

played is not necessarily relevant to the hardware that conducts or provides the game.” Reply Br. 7. As an initial matter, although Appellant quotes a discussion from the Answer on this issue (*see id.*), the exact same statement was provided in the Final Office Action. *Compare* Ans. 3, *with* Final Act. 3; *see also* 37 C.F.R. § 41.41(b)(2) (“Any argument raised in the reply brief which was not raised in the appeal brief, or is not responsive to an argument raised in the examiner’s answer . . . will not be considered by the Board for purposes of the present appeal, unless good cause is shown.”). Moreover, Appellant does not support the assertion with evidence or citations to the Specification to show, for example, that the *only* hardware that can provide the claimed invention is *other than* general-purpose computers.

In the Reply Brief, Appellant identifies “the specifically-recited slot symbol and GUI alteration limitations” as “the ‘something more’ that transforms any claimed abstract idea into a patent eligible concept.” Reply Br. 11. Although Appellant does not precisely identify the claim language relied upon, Appellant appears to rely on aspects—such as the recited “symbols”—shown on the “display device.” We view these features, however, as aspects of the abstract idea itself. *See* Ans. 5 (stating that “[t]he limitations directed to describing the connecting symbols, secondary connecting symbols, overlaying symbols, etc. are all considered part of the abstract idea, as they serve to define the rules of the wagering game”).

Third, Appellant asserts that “the pending claims most certainly do not foreclose other ways of providing electronic games.” Appeal Br. 24.

The Examiner responds that “preemption is not a standalone test for eligibility” and that “[q]uestions of preemption are inherent in and resolved by the two-part framework from *Alice Corp. and Mayo*, as explained by the

Federal Circuit in O[I]P and Sequenom.” Ans. 6. The Examiner also states, “while a preemptive claim may be ineligible, the absence of complete preemption does not demonstrate that a claim is eligible.” *Id.*

For the reasons stated by the Examiner as provided above, we are not apprised of error by this argument. *See Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (stating that “the absence of complete preemption does not demonstrate patent eligibility”); *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015) (“[T]hat the claims do not preempt all price optimization or may be limited to price optimization in the e-commerce setting do not make them any less abstract.”).

Fourth, Appellant argues that “the pending claims recite much more than the mere implementation of an electronic game” because, “extremely specifically, the pending claims recite a particular, narrowly-tailored manner of deriving multiple (*e.g.*, two) results for a matrix of slot symbols” via “identification of a unique and novel (*e.g.*, non-conventional and not found in the prior art - as evidenced by the lack of prior art rejections) ‘connecting symbol’ mechanism.” Appeal Br. 24. According to Appellant, “as specifically exemplified by the lack of prior art rejections, the limitations recited in the pending claims depart considerably from the routine and conventional manner of providing electronic slot-style games.” *Id.*

Even assuming that the claims at issue recite *novel* and *nonobvious* subject matter (under sections 102 and 103), that does not show that the claims are directed to *patent-eligible* subject matter (under section 101). *See SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1163 (Fed. Cir. 2018) (“We may assume that the techniques claimed are [g]roundbreaking, innovative, or



even brilliant, but that is not enough for eligibility. Nor is it enough for subject-matter eligibility that claimed techniques be novel and nonobvious in light of prior art, passing muster under 35 U.S.C. §§ 102 and 103.” (citations and quotations omitted)).

For these reasons, we are not apprised of error in the Examiner’s determination that the claims here do not contain additional elements that transform the identified abstract idea into patent-eligible subject matter.

Appellant presents an additional argument addressing the rejection as a whole (rather than one of the steps of the *Alice* framework). According to Appellant, “applying the Streamlined Eligibility Analysis, . . . claims 1-17 are directed to patent-eligible subject matter because they do not seek to tie up any broad concept or idea, such that others cannot practice it.” Appeal Br. 22 (discussing 2014 Interim Guidance on Patent Subject Matter Eligibility, 79 Fed. Reg. 74,618, 74,625 (Dec. 16, 2014) (§ I.B.3 “Streamlined Eligibility Analysis”) and July 2015 update on subject matter eligibility, <https://www.uspto.gov/patent/laws-and-regulations/examination-policy/subject-matter-eligibility-examination-guidance-date> (last visited Oct. 4, 2018) (providing links to various documents in July 2015 Update); *see also* July 2015 Update on Subject Matter Eligibility, 80 Fed. Reg. 45,429 (July 30, 2015)).

As an initial matter, for the reasons discussed above (*see* § B, third argument), “the absence of complete preemption does not demonstrate patent eligibility.” *Ariosa*, 788 F.3d at 1379; *see also* July 2015 Update: Subject Matter Eligibility, at 8–9, available at <https://www.uspto.gov/sites/default/files/documents/ieg-july-2015-update.pdf> (“The use of ‘tie up’ [in discussions of the “Streamlined Eligibility Analysis”] refers to the results of

Steps [One] and [Two], and *is not meant to imply that the streamlined analysis is either a preemption test or a means of avoiding the results that would occur if a claim were to undergo the full eligibility analysis.*” (emphasis added)).

Moreover, the guidance referenced by Appellant does not *require* an examiner to perform the “Streamlined Eligibility Analysis” rather than performing the “full” analysis (as performed by the Examiner here). Instead, the guidance provides the “Streamlined Eligibility Analysis” as an optional tool for examiners to use at their discretion. *See* 2014 Interim Guidance on Patent Subject Matter Eligibility, 79 Fed. Reg. 74,618, 74,625 (Dec. 16, 2014) (stating that “a streamlined eligibility analysis *can be used*” (emphasis added)). In addition, the guidance provides: “if there is doubt as to whether the applicant is effectively seeking coverage for a judicial exception itself, *the full analysis should be conducted.*” *Id.* (emphasis added). Here, the Examiner’s decision to perform a full analysis does not constitute error.

For the reasons above, we sustain the rejection of independent claims 1, 13, and 14. Because Appellant does not separately argue dependent claims 2–12 and 15–17, we also sustain the rejection of those claims.

#### DECISION

We *affirm* the decision to reject claims 1–17 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). *See* 37 C.F.R. § 1.136(a)(1)(iv); 37 C.F.R. § 41.50(f).

AFFIRMED