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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/741,547	01/15/2013	Daniel Jeremy Rich	21652-00251	7065

75564 7590 10/22/2018
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EXAMINER

MADAMBA, CLIFFORD B

ART UNIT	PAPER NUMBER
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3692

NOTIFICATION DATE	DELIVERY MODE
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10/22/2018

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DANIEL JEREMY RICH, JEFFREY LEO ALTEMUELLER,
ALEX INOVENKOV, RICHARD BARRY HUSA,
and VICTOR GABRIEL CHINININ-BUELE

Appeal 2017-004543¹
Application 13/741,547²
Technology Center 3600

Before ANTON W. FETTING, NINA L. MEDLOCK, and
TARA L. HUTCHINGS, *Administrative Patent Judges*.

MEDLOCK, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner’s final rejection of claims 1, 3–10, 12–19, and 21–29. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ Our decision references Appellants’ Appeal Brief (“App. Br.,” filed June 20, 2016) and Reply Brief (“Reply Br.,” filed February 1, 2017), and the Examiner’s Answer (“Ans.,” mailed December 1, 2016) and Final Office Action (“Final Act.,” mailed October 22, 2015).

² Appellants identify MasterCard International Incorporated as the real party in interest. App. Br. 1.

CLAIMED INVENTION

Appellants' claimed invention "relates generally to methods and systems for investigating fraudulent transactions and, more particularly, to computer-implemented methods and systems for identifying a payment card transaction as being potentially fraudulent, and modifying a status of the transaction card until the transaction is reviewed" (Spec. ¶ 2).

Claims 1, 10, and 19 are the independent claims on appeal. Claim 1, reproduced below with bracketed notations added, is illustrative of the claimed subject matter:

1. A payment processing computer system for modifying a status of a payment card, said payment processing computer system comprising:

a memory device for storing data; and

a processor in communication with said memory device, said processor programmed to:

[(a)] receive, from a merchant point-of-sale device associated with a first merchant, a first authorization request message associated with a first transaction initiated with a payment card, the first authorization request message including first transaction data representing a good or service being purchased from the first merchant;

[(b)] transmit a first scoring request message associated with the first transaction to a fraud scoring system, the first scoring request message including at least some of the first transaction data;

[(c)] receive a fraud scoring response message associated with the first transaction from the fraud scoring system, wherein the fraud scoring response message includes a first instruction directing a change to a status of the payment card from ACTIVE to SUSPENDED;

[(d)] generate a status change message based on the first instruction and transmitting the status change message to a cardholder management system, wherein the

status change message prompts a change in the status of the payment card from ACTIVE to SUSPENDED at the cardholder management system;

[(e)] receive, from a merchant point-of-sale device associated with a second merchant, a second authorization request message associated with a second transaction initiated with a payment card, the second authorization request message including second transaction data representing a good or service being purchased from the second merchant; and

[(f)] automatically decline the second transaction based on the status of the payment card without transmitting a second scoring request message to the fraud scoring system.

REJECTION

Claims 1, 3–10, 12–19, and 21–29 are rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter.

ANALYSIS

Under 35 U.S.C. § 101, 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 patentable. *Alice Corp. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014).

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 (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 79, 78).

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. Therefore, the Federal Circuit has instructed that claims are to be considered in their entirety to determine “whether their character as a whole is directed to excluded subject matter.” *McRO, Inc. v. Bandai Namco Games Am., Inc.*, 837 F.3d 1299, 1312 (Fed. Cir. 2016) (quoting *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015)).

Appellants maintain here that the § 101 rejection cannot be sustained because the Examiner has provided no evidence to support the Examiner’s determination that the claims are directed to an abstract idea (App. Br. 5–7). Citing the USPTO’s May 4, 2016 Memorandum to the Patent Examining Corps, entitled “Formulating a Subject Matter Rejection and Evaluating the Applicant’s Response to a Subject Matter Eligibility Rejection”³ and the Office’s subsequent May 19, 2016 Memorandum, entitled “Recent Subject Matter Eligibility Decisions (*Enfish, LLC v. Microsoft Corp.* and *TLI*

³ Available at <https://www.uspto.gov/sites/default/files/documents/ieg-may-2016-memo.pdf>.

Communications LLC v. A.V. Automotive, LLC),”⁴ Appellants assert that the Office Action does not satisfy the guidelines set forth in the USPTO memoranda, and that the Office has, therefore, not met its burden of establishing a prima facie case of patent-ineligibility (*id.* at 6–7).

Appellants’ argument is not persuasive at least because there is no requirement that an examiner provide evidentiary support in every case before a conclusion can be made that a claim is directed to an abstract idea. Although evidence may be helpful, e.g., where facts are in dispute, it is not always needed. *See Mortgage Grader, Inc. v. First Choice Loan Servs. Inc.*, 811 F.3d 1314, 1325–26 (Fed. Cir. 2016) (“[I]t is also possible, as numerous cases have recognized, that a § 101 analysis may sometimes be undertaken without resolving fact issues.”). Appellants’ bare assertion that evidence is needed here, without any supporting reasoning as to why, is insufficient to require the Examiner to provide evidentiary support.

The Federal Circuit, moreover, has consistently observed 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)). The court has, thus, held that 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 the rejection, “together with such information and references as may be useful in judging of the propriety of continuing the prosecution of [the] application.” *See In re Jung*, 637 F.3d 1356, 1362 (Fed. Cir. 2011) (alteration in original).

⁴ Available at https://www.uspto.gov/sites/default/files/documents/ieg-may-2016_enfish_memo.pdf.

Thus, all that is required of the Office is that it sets forth the statutory basis of the rejection in a sufficiently articulate and informative manner as to meet the notice requirement of § 132. *Id.*; see also *Chester v. Miller*, 906 F.2d 1574, 1578 (Fed. Cir. 1990) (“Section 132 is violated when a rejection is so uninformative that it prevents the applicant from recognizing and seeking to counter the grounds for rejection.”).

In rejecting the pending claims under § 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) and “July 2015 Update: Subject Matter Eligibility,”⁵ in effect at the time the Final Office Action was mailed. Specifically, the Examiner notified Appellants that the claims are directed to “managing the investigation of potentially fraudulent payment card transactions,” which the Examiner reasoned is a fundamental economic practice and, therefore, an abstract idea; and that the additional elements or combination of elements in the claims do not amount to significantly more than the abstract idea itself (Final Act. 4–7). The Examiner, thus, notified Appellants of the reasons for the rejection in a sufficiently articulate and informative manner as to meet the notice requirement of § 132. And we find that the Examiner, in doing so, set forth a proper rejection under § 101.

We also are not persuaded of Examiner error by Appellants’ argument that the present claims are analogous to claim 15 of the USPTO’s

⁵ Available at <https://www.uspto.gov/sites/default/files/documents/ieg-july-2015-update.pdf>.

Example 27 in the “July 2015 Update Appendix 1: Examples”⁶ (App. Br. 7–8), where the USPTO points out that “no apparent [judicial] exception [is] recited in the claim” (July 2015 Update Appendix 1, pg. 22).

Claim 15 recites a method for loading BIOS code onto a local computer system from a remote storage location. The USPTO concluded that the eligibility of claim 15 is “self-evident,” because the steps for initializing a local computer using BIOS code, i.e., triggering transfer of the BIOS code between two memory locations upon a powering up of the computer, and transferring control of the processor operations to the BIOS code, “make[] it clear that the claim as a whole would clearly amount to significantly more than any potential recited exception” (*id.*).

As the Examiner observes, the claimed invention, as recited in claim 15, addresses the computer-centric problem of storing sizable BIOS code that exceeds the available memory space in non-volatile read-only memory (“ROM”), as well as the difficulty involved in modifying BIOS code, if stored in ROM, as new input/output devices are added. It does so by

⁶ Exemplary claim 15, which appears at pages 21–22 of Appendix 1 of the July 2015 Update (available at <https://www.uspto.gov/sites/default/files/documents/ieg-july-2015-app1.pdf>), reads:

15. A method for loading BIOS into a local computer system which has a system processor and volatile memory and non-volatile memory, the method comprising the steps of:

(a) responding to powering up of the local computer system by requesting from a memory location remote from the local computer system the transfer to and storage in the volatile memory of the local computer system of BIOS configured for effective use of the local computer system,

(b) transferring and storing such BIOS, and

(c) transferring control of the local computer system to such BIOS.

storing the BIOS code remotely from the computer and, upon powering up the computer, transferring the BIOS code to the computer's volatile memory (i.e., random access memory) and transferring control of the computer operations to that BIOS code. Claim 15 is, thus, directed to a technological improvement, not to an abstract idea that is merely implemented using generic computer components.

Appellants argue that the present claims recite “storing remotely an account status at a cardholder management system, similar to the recitation in Claim 15 to transfer and store a BIOS and transfer control of the local computer system to such BIOS” (App. Br. 8; see also Reply Br. 5). Yet, we fail to see how, and Appellants do not explain how, storing an account status remotely at a cardholder management system is analogous to storing BIOS code at a remote memory location, which, in claim 15, is specifically designed to address a technical problem, i.e., the increase in size of BIOS codes as computers have grown more sophisticated and the difficulty in modifying BIOS code stored in ROM. Rather than paralleling claim 15, the present claims, in our view, appear analogous to the category of claims that Example 27 describes as patent-ineligible, i.e., computer-implemented processes where “generic computer functions are merely used to implement an abstract idea, such as an idea that could be done by human analog (*i.e.*, by hand or by merely thinking)” (July 2015 Update Appendix 1, pg. 22).

Appellants object to the Examiner's assertion that “[i]n a sale, verification, or authentication transaction at a physical Point of Sale terminal or kiosk, absent a computer or mobile device[,] the account information can still be detected, determined and communicated manually or verbally in a manner that would be commensurate with the abstract idea” (App. Br. 8–9

(citing Final Act. 6–7)). Appellants charge that the Examiner has ignored the actual claim recitations in contravention of the USPTO’s May 2016 Guidance (*id.* at 9).

In fact, the Examiner does not ignore the claim language at all. Instead, the point of the Examiner’s statement is although claim 1 recites the use of a “processor,” the underlying processes recited in claim 1, including receiving an authorization request; transmitting a scoring request; receiving a fraud scoring response; changing the status of a payment card; and declining a sales transaction, are all acts that could be performed by a human, i.e., communicating manually, using pen and paper, or verbally, without the use of a computer.

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. *See CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1372–73 (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.”); *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972) (“[p]henomena of nature . . ., mental processes, and abstract intellectual concepts are not patentable, as they are the basic tools of scientific and technological work.”). Additionally, mental processes remain unpatentable even when automated to reduce the burden on the user of what once could have been done with pen and paper. *CyberSource*, 654 F.3d at 1375 (“That purely mental processes can be unpatentable, even when performed by a computer, was precisely the holding of the Supreme Court in *Gottschalk v. Benson*.”).

Turning to step two of the *Mayo/Alice* framework, Appellants argue that even if the claims are directed to an abstract idea, the claims are nonetheless patent-eligible because the claims effect an improvement in a technical field (App. Br. 9–14). More particularly, Appellants argue that the technical field of electronic processing of data between computing devices is improved by caching data, i.e., payment card status, locally at a remote computer, i.e., the cardholder management system, so that the data need not be retrieved from a host computer each time it is required (*id.* at 9; *see also* Reply Br. 3). Appellants explain that, after a change in the local status of a payment card to “suspended,” subsequent attempts to complete transactions using the payment card are automatically declined, without the need to transmit a fraud score request to a fraud scoring system (App. Br. 9–11) — an approach that Appellants maintain “reduce[s] network traffic on the payment processing network by reducing unnecessary decline messages between the payment processing computer system and merchant point-of-sale computing device” and “offer[s] increased reliability for the payment processing system as a whole since suspended cards are less likely to be used to complete transactions” (*id.* at 11).

As an initial matter, we find nothing in this record, short of attorney argument, that attributes any improvement in managing network traffic and/or network capacity to the claimed invention. And although the claimed system may prevent subsequent transactions using a suspended card from being completed until after a potentially fraudulent current transaction is successfully investigated, i.e., by declining authorization of a second transaction when potential fraud is detected in a first transaction, we are not persuaded that this is a technological improvement, as opposed to an alleged

improvement to the business process of managing and investigating potentially fraudulent transactions.

For much the same reasons, we also are not persuaded by Appellants' argument that the present claims are analogous to those in *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014) (App. Br. 11–13) and *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016) (App. Br. 13). Appellants argue that, as in *DDR Holdings*, the present claims recite a solution necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks (*id.* at 12–13). But, we are not persuaded that managing and investigating potentially fraudulent transactions is a challenge specifically arising in the realm of computer networks. And, the proposed solution here, i.e., blocking further transactions while suspected fraudulent activity is being investigated, using, at best, a generic processor, is not “necessarily rooted in computer technology.” Rather, it is an implementation on generic computer components of the abstract idea itself.⁷ As the court explained in *Enfish*, the inquiry is not whether there is a business challenge resolved by the claimed invention, but whether the challenge is one rooted in technology, or one

⁷ Appellants assert that “a specially configured interchange computer (or computer component of an interchange server system) implements the claimed recitations, and not a ‘generic computer’ as alleged by the Office Action” (App. Br. 13). However, we find no indication in the Specification, nor do Appellants direct us to any indication, that the operations recited in the claims require any specialized computer hardware or inventive computer components. Instead, the Specification suggests just the opposite, i.e., that the claimed invention can be implemented using generic computer components (*see, e.g.*, Spec. ¶¶ 17, 19, and 28–30).

where the proposed solution is merely using computers as a tool. *See Enfish*, 822 F.3d at 1335–36.

Although Appellants ostensibly contend otherwise, the claims at issue in *DDR Holdings* were not held patent-eligible because they required computing devices or because the claims themselves were detailed or involved the use of technology. To the contrary, the Federal Circuit cautioned that “not all claims purporting to address Internet-centric challenges are eligible for patent.” *DDR Holdings*, 773 F.3d at 1258. Instead, the court held that the claims distinguished over patent-ineligible claims that “broadly and generically claim ‘use of the Internet’ to perform an abstract business practice (with insignificant added activity),” because they “specify how interactions with the Internet are manipulated to yield a desired result — a result that overrides the routine and conventional sequence of events ordinarily triggered by the click of a hyperlink.” *Id.*

Here, we do not find, and Appellants do not identify, any analogous modification to the routine and conventional functioning of computer network technology. At best, the invention appears to use generic computer components (e.g., a processor in communication with a memory device (claim 1)) to perform an abstract business practice (i.e., blocking further payment card transactions while suspected fraudulent activity is being investigated). Also, unlike the claims in *Enfish*, the present claims are not directed to an improvement in the way computers operate. Nor, for that matter, do Appellants contend as much.

Appellants further argue that the present claims are analogous to patent-eligible claim 2 of Example 21 of the July 2015 Update on Subject

Matter Eligibility (App. Br. 13–14).⁸ But, claim 2 of Example 21 is not a strong basis for arguing that the present claims are patent-eligible at least because claim 2 is a hypothetical claim, not an actual claim at issue in *Google Inc. v. Simpleair, Inc.*, CBM 2014-00170, 2015 WL 331089 (PTAB Jan. 22, 2015). The Board did not hold a claim like claim 2 of Example 21, or any claim in US 7,035,914 B1 for that matter, patent-eligible as a matter of law. Instead, the Board found that the Petitioner had not “shown sufficiently that claims 1-3, 7, and 22-24 [of US 7,035,914 B1] are more likely than not unpatentable as being directed to patent-ineligible subject matter under 35 U.S.C. § 101.” *Id.* at *10 (“Petitioner’s generalized arguments, not directed to the specific language of the challenged claims, are insufficient to show that the claims more likely than not are directed to a patent-ineligible abstract idea.”).

Even were that not so, we do not agree with Appellants that claim 2 of Example 21 is comparable to the present claims. Appellants observe that claim 2 of Example 21 recites acts for distributing stock quotes to selected remote devices, and that “[a]dditional limitations recite . . . providing a stock viewer application that causes the stock quote alert to display on the subscriber computer and enables a connection from the subscriber computer to the data source over the Internet when the subscriber computer comes online” (App. Br. 13). And Appellants argue that the present claims “solve a problem arising in the field of computers with a claimed solution that is necessarily rooted in computer technology, similar to the stock viewer

⁸ See July 2015 Update, Appendix 1: Examples (available at <https://www.uspto.gov/sites/default/files/documents/ieg-july-2015-appl.pdf>).

application in Example 21” (*id.* at 14). But, we fail to see how, and Appellants do not adequately explain how, changing a payment card status at a remote cardholder management system is analogous to causing a stock quote alert to display on a subscriber computer. The USPTO determined that claim 2 was patent-eligible because the claimed invention addressed the Internet-centric challenge of alerting a subscriber with time-sensitive information when the subscriber’s computer is offline. We are not persuaded that the present claims address any comparable Internet-centric challenge.

Finally, Appellants ostensibly maintain that the § 101 rejection cannot be sustained because the Examiner has provided “no findings of fact to substantiate the assertion that the claims describe ‘routine and conventional activities’” (App. Br. 14). Yet, Appellants misapprehend the controlling precedent, to the extent Appellants maintain that the claimed invention is patent-eligible, i.e., that the claims amount to “significantly more” than an abstract idea, because “[c]laim 1 recites steps that are not ‘well-understood, routine, and conventional,’” as evidenced “by the fact that the Examiner cites no prior art that describes or suggests these recitations” (*id.*; *see also* Reply Br. 2 (“These recitations [i.e., steps d–f, as recited in claim 1] are not directed to a fundamental truth or a building block of human ingenuity, as evidenced by the fact that the Examiner has failed to cite any prior art references that even supposedly describe or suggest these claimed recitations.”)).

A finding of novelty or non-obviousness does not automatically lead to the conclusion that the claimed subject matter is patent-eligible. Although the second step in the *Mayo/Alice* framework is termed a search for an

“inventive concept,” the analysis is not an evaluation of novelty or non-obviousness, but rather, a search for “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.’” *Alice Corp.*, 134 S. Ct. at 2355. “Groundbreaking, innovative, or even brilliant discovery does not by itself satisfy the § 101 inquiry.” *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 591 (2013). A novel and non-obvious claim directed to a purely abstract idea is, nonetheless, patent-ineligible. *See Mayo*, 566 U.S. at 90; *see also Diamond v. Diehr*, 450 U.S. 175, 188–89 (1981) (“The ‘novelty’ of any element or steps in a process, or even of the process itself, is of no relevance in determining whether the subject matter of a claim falls within the § 101 categories of possibly patentable subject matter.”).

Specifically addressing step two of the *Mayo/Alice* framework in its recent decision in *Berkheimer v. HP Inc.*, 881 F.3d 1360 (Fed. Cir. 2018), the Federal Circuit held that the 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. Yet, the law is clear that the claim elements to be considered (when determining whether the claims include additional elements or a combination of elements that amount to “significantly more” than the judicial exception) cannot be the abstract idea itself. *See Mayo*, 566 U.S. at 72–73 (requiring that “a process that focuses upon the use of a natural law also contain *other* elements or a combination of elements, sometimes referred to as an ‘inventive concept,’ sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the

natural law itself” (emphasis added)); *see also BSG Tech. LLC v. BuySeasons, Inc.*, 899 F.3d 1281, 1290 (Fed. Cir. 2018) (“It has been clear since *Alice* that a claimed invention’s use of the ineligible concept to which it is directed cannot supply the inventive concept that renders the invention ‘significantly more’ than that ineligible concept.”). “[A]nd *Berkheimer* . . . leave[s] untouched the numerous cases from [the Federal Circuit] which have held claims ineligible because the only alleged ‘inventive concept’ is the abstract idea.” *Berkheimer v. HP Inc.*, 890 F.3d 1369, 1374 (Fed. Cir. 2018) (Moore, J., concurring); *see also BSG Tech.*, 899 F.3d at 1290 (“Our precedent has consistently employed this same approach. If a claim’s only ‘inventive concept’ is the application of an abstract idea using conventional and well-understood techniques, the claim has not been transformed into a patent-eligible application of an abstract idea.”).

The Examiner determined here, and we agree, that the only claim elements beyond the abstract idea are the claimed processor and memory device, i.e., generic computer components (Ans. 12–13). Appellants cannot reasonably contend, nor do they, that there is a genuine issue of material fact regarding whether operation of the claimed processor is well-understood, routine, or conventional, where, as here, there is nothing in the Specification to indicate that the operations recited in the claims require any specialized hardware or inventive computer components or that the claimed invention is implemented using other than generic computer components to perform generic computer functions. Indeed, the Federal Circuit, in accordance with *Alice*, has “repeatedly recognized the absence of a genuine dispute as to eligibility” where claims have been defended as involving an inventive concept based “merely on the idea of using existing computers or the

Internet to carry out conventional processes, with no alteration of computer functionality.” *Berkheimer*, 890 F.3d at 1373 (Moore, J., concurring) (citations omitted); *see also BSG Tech.*, 899 F.3d at 1291 (“BSG Tech does not argue that other, non-abstract features of the claimed inventions, alone or in combination, are not well-understood, routine and conventional database structures and activities. Accordingly, the district court did not err in determining that the asserted claims lack an inventive concept.”).

We are not persuaded, on the present record, that the Examiner erred in rejecting claims 1, 3–10, 12–19, and 21–29 under 35 U.S.C. § 101. Therefore, we sustain the Examiner’s rejection.

DECISION

The Examiner’s rejection of claims 1, 3–10, 12–19, and 21–29 under 35 U.S.C. § 101 is affirmed.

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