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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte PHILLIP ASHTON ARMSTRONG,
TYLER McKAY HAWS, JEREK J. ANDERSON,
SHAWN RUSSELL O'NEILL, and
SCOTT STANLEY ERICKSON

Appeal 2017-005376
Application 14/023,363[1]
Technology Center 3600

Before LARRY J. HUME, JASON J. CHUNG, and JOHN D. HAMANN, *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 1–22, which are all claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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[1] According to Appellants, the real party in interest is Clearwater Analytics, LLC. Br. 1.

STATEMENT OF THE CASE[2]

The Invention

Appellants' disclosed embodiments and claimed invention relate to a "method and system for reconciling an account among three data sources, including data provided by or on behalf of an entity, data provided by an asset manager, and data provided by a custodian of an account held by the entity." Spec. 36 (Abstract).

Exemplary Claim

Claim 1, reproduced below, is representative of the subject matter on appeal (formatting added):

> 1. A method for reconciling financial data associated with an entity among three data sources, the method performed by a computing system having a processor and a memory, the method comprising:
>
> maintaining financial data associated with an entity from three data sources, the maintained financial data comprising:
>
> entity financial data associated with the entity and received from the entity, the entity financial data enhanced by:
>
> generating predictable transactions based on the entity financial data;
>
> adding the generated predictable transactions to the entity financial data;

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[2] Our decision relies upon Appellants' Appeal Brief ("Br.," filed Mar. 24, 2016); Examiner's Answer ("Ans.," mailed Nov. 7, 2016); Final Office Action ("Final Act.," mailed Apr. 23, 2015); and the original Specification ("Spec.," filed Sept. 10, 2013). We note Appellants did not file a Reply Brief in response to the factual findings and legal conclusions in the Examiner's Answer.

manager financial data associated with the entity and received from a manager of financial assets for the entity,

wherein the manager financial data is received on a periodic basis having a frequency of at least one time per business day;

custodian financial data associated with the entity and received from a custodian of financial transactions for the entity,

wherein the custodian financial data is received on a periodic basis having a frequency of at least one time per business day;

comparing transactions described in entity financial data, manager financial data, and custodian financial data;

matching a transaction among the entity financial data, manager financial data, and custodian financial data;

identifying a property associated with the transaction that is common to the transaction among the entity financial data, manager financial data, and custodian financial data;

comparing a value of the property among the entity financial data, manager financial data, and custodian financial data;

identifying a difference in the value of the property among the entity financial data, manager financial data, and custodian financial data;

reconciling the value of the property,

wherein reconciling the value of the property includes selecting a reconciled value for the property based at least in part on the value of the property as specified by the entity financial data, the value of the property as specified by the manager financial data, and the value of the property

as specified by the custodian financial data; and

storing the reconciled value of the property.

Rejection on Appeal[3]

Claims 1–22 stand rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. Final Act. 3.

CLAIM GROUPING

Based on Appellants' arguments (Br. 6–16), we decide the appeal of patent-ineligible subject matter Rejection R1 of claims 1–22 on the basis of representative claim 1.[4]

ISSUE

Appellants argue (*id.*) the Examiner's rejection of claim 1 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter is in error. These contentions present us with the following issue:

Under our governing case law, did the Examiner err in concluding claim 1 is directed to a judicial exception, i.e., an abstract idea, specifically the abstract idea of reconciling financial data, without significantly more, and thus is patent-ineligible under § 101?

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[3] We note the Examiner indicates "[c]laims 1–22 appear allowable over the prior art of record." Final Act. 5.

[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).

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 1–22 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 1 for emphasis as follows.

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). Although 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).

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).

Alice Step 1 — Abstract Idea

Appellant contends the Examiner must refer to the body of case law precedent to identify abstract ideas by comparison to concepts already found to be abstract. Br. 8. "In other words, as explained in the July 2015 Update, 'a claimed concept [should not be] identified as an abstract idea unless it is similar to at least one concept that the courts have identified as an abstract idea.'[ ]" Br. 9 (footnotes omitted).

Along these lines, Appellant further argues, "[t]he Examiner, however, offers no case law in which the reconciliation of financial data received from three different sources has been identified as an abstract idea. Nor has the Examiner demonstrated, with reference to case law, how

Appellants' claims are comparable to any other abstract ideas established in the body of precedential case law." Br. 9–10.

In response, the Examiner reiterated that the Final Action "identified the abstract idea represented by the claims as 'reconciling financial data received from three different sources' explaining that this was an abstract idea because is merely an accounting practice." Ans. 3–4 (citing Final Act. 5.

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 1 recites: "A method for reconciling financial data associated with an entity among three data sources, the method performed by a computing system having a processor and a memory." Claim 1 (preamble).

Method claim 1 limitations also require the steps of:

(a) "maintaining . . . data . . . from three data sources";

(b) "comparing transactions;"

(c) "matching a transaction;"

(d) "identifying a property associated with the transaction;"

(e) "comparing a value;"

(f) "identifying a difference in the value;"

(g) "reconciling the value of the property," and

(h) "storing the reconciled value of the property."

Because the rejection in the Final Action was not presented in the form of the two-step *Mayo/Alice* analysis,[5] in the Answer, the Examiner restated the rejection of claim 1 under § 101 by applying the current *Mayo/Alice* Examination Guidelines and identifying case law precedent by comparison to concepts already found to be abstract by the Federal Circuit. Ans. 4–8. In this regard, we incorporate the Examiner's factual findings and legal conclusions herein by reference, and adopt them as our own.

Thus, under step one, we agree with the Examiner that the inventions claimed in each of independent claims 1, 9, and 17 are directed to an abstract idea, i.e., reconciling financial data, an accounting practice, which we also conclude is a method of organizing human activity. *See* Ans. 4; *see also* Final Act. 5.

As the Specification discloses,

> A method and system are described for reconciling differences in financial data associated with an account held by an entity. The system performs reconciliation based on three data sources: a first data source maintained by or on behalf of the entity, a second data source received from an asset manager associated with the entity, and a third data source received from a custodian associated with the entity.

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[5] The Examiner noted "the original § 101 rejection (see non-final Office action mailed on 09/19/2014) was prepared and written prior to and without the benefit of either the 2014 Interim Guidance or the July 2015 Update." Ans. 2. The Examiner also noted that, because the guidelines did not constitute substantive rulemaking and did not have the force and effect of law, "failing to adhere to these guidelines does not in itself render the Examiner's rejection insufficient to establish a *prima facie* case of eligibility." Ans. 3. We agree. Our Decisions are based upon relevant case law.

Spec. ¶ 11.[6]

We find this type of activity, i.e., comparing new and stored information and using rules to reconcile differences, 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]

Our reviewing court has previously held other patent claims ineligible for reciting similar abstract concepts. For example, although the Supreme Court has enhanced the § 101 analysis in cases like *Mayo* and *Alice*, the Federal Circuit continues to "treat[ ] analyzing information by steps people

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[6] *See also* Spec. 36 ("Abstract"):

> A method and system for reconciling an account among three data sources, including data provided by or on behalf of an entity, data provided by an asset manager, and data provided by a custodian of an account held by the entity. The system identifies data provided by the entity and receives data from the asset manager and data from the custodian on a daily basis. The system normalizes and aggregates the data. The system matches transactions and positions executed on behalf of the entity among the three data sets. The system compares data associated with matched transactions and positions among the three data sets. If the system identifies any differences in the data associated with a matched transaction and positions among the three data sets, the system reconciles the data. The system may also generate a reconciliation report.

[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.

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). Moreover, 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). Also, collecting and comparing known information has been determined to be an abstract idea. *Classen Immunotherapies, Inc. v. Biogen IDEC*, 659 F.3d 1057, 1067 (Fed. Cir. 2011). 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).

Appellant also alleges claim 1 is patent-eligible because its practice does not preempt practice by others. Br. 11–12. We agree with the Examiner's response, which we incorporate herein by reference. Ans. 7–8; *and see buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014)

(collecting cases); *Accenture Global Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1345 (Fed. Cir. 2013); *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) ("While preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility").

Therefore, in agreement with the Examiner, we conclude claim 1 involves nothing more than reconciling financial transactions, i.e., comparing new and stored information and using rules to reconcile differences, 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.

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

[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).

patentable subject matter. *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014) (citation omitted). 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 more than "well-understood, routine, conventional activity." *Mayo*, 566 U.S. at 79.

Evaluating representative claim 1 under step 2 of the *Alice* analysis, we agree with the Examiner that it lacks an inventive concept that transforms the abstract idea of comparing new and stored information and using rules to reconcile differences into a patent-eligible application of that abstract idea. *See* Ans. 8–11.[9]

The Examiner concludes "the claims merely recite within the preamble 'a computing system having a processor and a memory' to perform the recited method steps. Claim 17 merely recites 'a memory' and 'a processor' configured to execute instructions to perform the abstract idea. The remaining claims do not add any further additional technological components." Ans. 9.

> Moreover, the Examiner explained that "the proposed solution is not rooted in computer technology, but rather is rooted in accounting practices which are incidentally performed on a computer," concluding that "in this instance, the additional of the machine does not play a significant part in permitting the claimed method to be performed, but rather, 'function[s] solely

[9] The Examiner concludes, "[m]oreover, when considering the elements and combinations of elements, the claims as a whole, do not amount to significantly more than the abstract idea itself. This is because the claims merely amount to applying the abstract idea on a computer." Final Act. 5.

> as an obvious mechanism for permitting a solution to be achieved more quickly, i.e., though the utilization of a computer for performing calculations."

Id.

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 Examiner's citation to Appellants' Specification in paragraph 17.[10] For example:

> **[0017]** . . . . The invention can also be embodied in a special purpose computer or data processor that is specifically programmed, configured, or constructed to perform one or more of the computer-executable instructions explained in detail herein. Indeed, the terms "computer" and "computing device," as used generally herein, refer to devices that have a processor and non-transitory memory, like any of the above devices, as well as any data processor or any device capable of communicating with a network. Data processors include programmable general-purpose or special-purpose microprocessors, programmable controllers, application-specific integrated circuits (ASICs), programmable logic devices (PLDs), or the like, or a combination of such devices. Computer-executable instructions may be stored in memory, such as random access memory (RAM), read-only memory

[10] "[T]he Examiner found that 'any generic computer could be used to perform the claim[ed] method' based on Appellant's own statements made in the disclosure." Ans. 9 (citing Final Act. 6 (citing Spec. ¶ 17, describing a methods may be executed by "a general-purpose computer")).

> (ROM), flash memory, or the like, or a combination of such components. Computer-executable instructions may also be stored in one or more storage devices, such as magnetic or optical-based disks, flash memory devices, or any other type of non-volatile storage medium or non-transitory medium for data. Computer-executable instructions may include one or more program modules, which include routines, programs, objects, components, data structures, and so on that perform particular tasks or implement particular abstract data types.
>
> **[0018]** The system and method can also be practiced in distributed computing environments, where tasks or modules are performed by remote processing devices, which are linked through a communications network 160, such as a Local Area Network ("LAN"), Wide Area Network ("WAN"), or the Internet. In a distributed computing environment, program modules or subroutines may be located in both local and remote memory storage devices. Aspects of the invention described herein may be stored or distributed on tangible, non-transitory computer-readable media, including magnetic and optically readable and removable computer discs, stored in firmware in chips (e.g., EEPROM chips). Alternatively, aspects of the invention may be distributed electronically over the Internet or over other networks (including wireless networks). Those skilled in the relevant art will recognize that portions of the invention may reside on a server computer, while corresponding portions reside on a client computer. Data structures and transmission of data particular to aspects of the invention are also encompassed within the scope of the invention.

Spec. ¶¶ 17–18.

We agree with the Examiner that the claim limitations may be broadly but reasonably construed as reciting conventional computer components and

techniques, particularly in light of Appellant's Specification, as quoted above.[11]

Further, Appellants' brief citation to *DDR* (Br. 15) in a ***Step 2*** inventive concept analysis is misplaced as the recited claims do not improve the computer. In *DDR*, which we point out is associated with analysis under ***Step 1***, i.e., the Abstract Idea analysis, the claims at issue involved, *inter alia*, "web pages displays [with] at least one active link associated with a commerce object associated with a buying opportunity of a selected one of a plurality of merchants" (claim 1 of US 7,818,399). The Federal Circuit held "the use of generic computer elements like a microprocessor or user interface do not alone transform an otherwise abstract idea into patent-eligible subject matter." *FairWarning IP LLC v. Iatric Sys. Inc.*, 839 F.3d 1089, 1096 (Fed. Cir. 2016) (citing *DDR Holdings, LLC v. Hotels.com*, L.P., 773 F.3d 1245, 1256 (Fed. Cir. 2014)).

With respect to the *Step 2* analysis, we agree with the Examiner because, as in *Alice*, the recitation of either a "method performed by a computing system having a processor and a memory" (claims 1 and 9), or a "system for reconciling financial data associated with an entity among three data sources" having a "memory," an "aggregation module," a "prediction

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[11] 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).

module," a "reconciliation module," and "a processor" (claim 17) 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.").[12]

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 1, and grouped claims 2–22, not argued separately, and which fall therewith. *See* Claim Grouping, *supra*.

CONCLUSION

The Examiner did not err with respect to the patent-ineligible subject matter rejection of claims 1–22 under 35 U.S.C. § 101, and we sustain the rejection.

DECISION

We affirm the Examiner's decision rejecting claims 1–22.

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

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[12] Appellant merely alleges, "[b]ecause the present claims demonstrate "significantly more" than any alleged abstract idea under the guidance of Alice, the claims satisfy part two of the two-part Alice framework and are therefore patent-eligible." Br. 16.