UNITED STATES PATENT AND TRADEMARK OFFICE

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46583 7590 03/04/2019 Roberts Mlotkowski Safran Cole & Calderon, P.C. Intellectual Property Department P.O. Box 10064 MCLEAN, VA 22102-8064	**EXAMINER** CRANFORD, MICHAEL D

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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 RICK A. HAMILTON II,
KONSTANTINOS MAKROPOULOS,
BRYAN J. MARTIN, and JAMES W. SEAMAN

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Appeal 2017-006085
Application 14/303,853
Technology Center 3600

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Before DEBRA K. STEPHENS, MICHAEL J. STRAUSS, and
KARA L. SZPONDOWSKI, *Administrative Patent Judges*.

SZPONDOWSKI, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's
Final rejection of claims 1–20. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

STATEMENT OF THE CASE

Appellants' invention is directed to a method and system for managing and enabling a vendor-neutral bid process for the same client sales opportunity. Spec. ¶ 1. Claim 1, reproduced below, is representative of the claimed subject matter:

1.　A method implemented in a computer infrastructure having computer executable code, comprising:

receiving, by one or more computing devices, information in support of a bid made by a vendor for a product or service provided by a supplier for eventual resale by the vendor to a target client, through a web-based interface using one of hypertext transfer protocol (HTTP), file transfer protocol (FTP), secure shell (SSH), and extensible markup language (XML) such that each vendor manages their bid support documents shifting it away from an organization receiving the bid;

assigning an opportunity number which is submitted with the bid and stored with bid information upon receipt;

translating inbound webpage content which is received through the web based interface to a bid certification tool (BCT) server;

determining, by one or more computing devices, that a threshold amount of predetermined value-add eligibility criteria of a supplier is met by value-add eligibility documentation received in the bid from a vendor for a product or service provided by a supplier for eventual resale by the vendor to a target client, wherein the value-add eligibility criteria includes services and support required by or beneficial to the target client;

calculating, by the one or more computing devices, a bid price based on the bid from the vendor;

inputting a price into the BCT server through an application programming interface (API) which communicates between an

organization's existing pricing tool and the BCT server and further inputs the price into a database;

determining a relative value of the bid from the vendor based on predefined points stored in a point value table, with points assigned to different differentiators, activities, and documents associated with a plurality of vendors;

updating, by the one or more computing devices, a record indicating the bid price;

communicating with at least one or more computing devices external to the computer infrastructure via a communications link; and calculating values based on comparative data between vendors using a point-value table, which has entries for a points based system, the point-value table includes information which identifies BVC comparative criteria including: the differentiators, the activities, and the documents that are determined to be important.

REJECTIONS

Claims 1–20 stand rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter.

ANALYSIS

35 U.S.C. § 101 Rejections

An invention is patent-eligible if it claims a "new and useful process, machine, manufacture, or composition of matter." 35 U.S.C. § 101. However, the Supreme Court has long interpreted 35 U.S.C. § 101 to include implicit exceptions: "[l]aws of nature, natural phenomena, and abstract ideas" are not patentable. *E.g., Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208, 216 (2014).

In determining whether a claim falls within an excluded category, we are guided by the Supreme Court's two-step framework, described in *Mayo* and *Alice*. *Id.* at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–77 (2012)). In accordance with that framework, we first determine what concept the claim is "directed to." *See Alice*, 573 U.S. at 219 ("On their face, the claims before us are drawn to the concept of intermediated settlement, *i.e.,* the use of a third party to mitigate settlement risk."); *see also Bilski v. Kappos*, 561 U.S. 593, 611 (2010) ("Claims 1 and 4 in petitioners' application explain the basic concept of hedging, or protecting against risk.").

Concepts determined to be abstract ideas, and thus patent ineligible, include certain methods of organizing human activity, such as fundamental economic practices (*Alice*, 573 U.S. at 219–20; *Bilski*, 561 U.S. at 611); mathematical formulas (*Parker v. Flook*, 437 U.S. 584, 594–95 (1978)); and mental processes (*Gottschalk v. Benson*, 409 U.S. 63, 69 (1972)).

If the claim is "directed to" an abstract idea, we turn to the second step of the *Alice* and *Mayo* framework, where "we must 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." *Alice*, 573 U.S. at 221 (quotation marks omitted). "A claim that recites an abstract idea must include 'additional features' to ensure 'that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].'" *Id.* (quoting *Mayo*, 566 U.S. at 77). "[M]erely requir[ing] generic computer implementation[] fail[s] to transform that abstract idea into a patent-eligible invention." *Id.*

The PTO recently published revised guidance on the application of § 101. USPTO's January 7, 2019 Memorandum, *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 55 ("Memorandum"). Under that guidance, we first look to whether the claim recites:

(1) any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human activity such as a fundamental economic practice, or mental processes); and

(2) additional elements that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h)).

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, do we then look to whether the claim:

(3) adds a specific limitation beyond the judicial exception that is not "well-understood, routine, conventional" in the field (*see* MPEP § 2106.05(d)); or

(4) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.

See Memorandum at 50.

Claim 1

Under the first step of the *Alice/Mayo* framework, the Examiner determines the claims are directed to the abstract idea of "processing bid data information" which is a method of organizing human activity. Ans. 3–4; Final Act. 13, 17. The Examiner further determines the claims are directed to "activities which can be performed mentally by a human using pencil and paper" and to "fundamental economic practices." *Id.* at 7. The

Examiner determines the claims "do not make an improvement to any technical field or to a computer but simply use an underlying technology to implement the abstract idea." *Id.* at 15; *see also id.* at 16. The Examiner further determines the claims merely amount to instructions to apply the abstract idea on a computer. *Id.* at 11.

Appellants argue claim 1 is not directed to a fundamental economic practice because "[t]he one or more computing devices in [the] computer infrastructure allow [the] information to be shared by the parties through various mechanisms, such as servers, web-based interfaces and a database" which "amount[s] to more than contracts, legal obligations, and business relations." App. Br. 9–10. Similarly, Appellants argue claim 1 is not directed to methods of organizing human activity because the "claimed invention is directed to features that create an environment for various computing devices to interact with one another so that information from multiple parties can be shared across the parties." Reply Br. 4. Likewise, Appellants argue claim 1 "could not be done by a human analog, such as by hand or by merely thinking," but rather "is performed by a computer infrastructure having a computer executable code, computing devices interacting with one another so that information from multiple parties can be shared across the parties, such as by mechanisms like servers, web-based interfaces and a database." App. Br. 11–12. Appellants argue "there is nothing foundational or basic about features such as a computer infrastructure having a computer executable code so that various computing devices interact with one another to disseminate information across multiple parties." *Id.* at 9.

Appellants do not persuasively argue why claim 1 is not directed to an abstract idea. Appellants' Specification describes "a method and system for managing and enabling a vendor-neutral bid process for the same client sales opportunity." Spec. ¶ 1. In the Background of the Invention, Appellants discuss certain problems encountered in processing a bid and selecting the right vendor. *Id.* ¶¶ 2–10. For example, Appellants explain "without a standardized, well understood, and impartial mechanism for recording and evaluating vendor eligibility, influence, and preparedness with respect to any individual sales opportunity, vendor relationships with the organization may be harmed, where one or more vendors may not feel that an impartial decision has been made." *Id.* ¶ 8. Appellants further explain "where lack of a defined evaluation criteria and data exists, it is often not possible for the organization to determine which vendor should receive favorable pricing or sales assistance." *Id.* ¶ 9.

Appellants solve these problems through a "computer infrastructure" that "can perform the processes described [in the Specification]." *Id.* ¶ 23. In the Detailed Description of the Embodiments of the Invention, Appellants state "[i]mplementing the invention provides a software architecture, unique logic elements, and multiple embodiments *to automate, enhance, and improve upon existing bid certification process systems and methods.*" *Id.* ¶ 22 (emphasis added). Appellants further state "[b]y implementing the invention, the use of time[,] resources, accuracy, and personal neutrality involved in the bid process are all greatly improved, providing a more balanced bid environment which results in better relationships between vendors and the organization, e.g., the company, and also amongst the vendors themselves." *Id.*

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In light of Appellants' Specification, we are not persuaded by Appellants' argument that claim 1 is not directed to an abstract idea. Rather, we agree with the Examiner that claim 1 is directed to a fundamental economic practice (e.g., processing bid information) and/or commercial interaction, which the Office Guidance identifies as certain methods of organizing human activity. *See* Memorandum at 52; Ans. 7. We agree that processing a bid in order to select the correct vendor is "a fundamental economic practice long prevalent in our system of commerce." *Alice*, 573 U.S. at 219 (quoting *Bilski v. Kappos*, 561 U.S. 593, 611 (2010). We further agree with the Examiner that the claim is directed to the abstract idea of a mental process. *See* Memorandum at 52; Ans. 7.

In particular, the method of claim 1 is directed to processing bid information in that it recites a process for receiving and evaluating bids, including, *inter alia*, receiving information in support of a bid, assigning an opportunity number and storing it with the bid information, determining that a threshold amount of predetermined value-add eligibility is met by value-add eligibility documentation received in the bid, calculating a bid price based on the bid, determining a relative value of the bid based on predefined points stored in a point value table, updating a record indicating the bid price, and calculating values based on comparative data between vendors using a point-value table. *See* claim 1. We agree these steps are directed to methods for organizing human activity. In addition, the series of steps covered by claim 1 can be performed by humans without a computer. *Cf. CyberSource Corp. v. Retail Decisions, Inc.,* 654 F.3d 1366, 1373 (Fed. Cir. 2011); *see also Mortgage Grader, Inv. v. First Choice Loan Servs.,* 811 F.3d 1314, 1324 (Fed. Cir. 2015); *see also Elec. Power Grp. LLC v. Alstom,* 830

F.3d 1350, 1353-54 (Fed. Cir. 2016) (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."). The mere mention of certain claimed computer components (e.g. "computer infrastructure," "web-based interface," "server," "computing device") does not impose sufficiently meaningful limitations on claim scope beyond these mental steps. *CyberSource*, 654 F.3d at 1372–73, 1375; *Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1318 (Fed. Cir. 2016).

In determining whether claim 1 is "directed to" the identified abstract ideas, we next consider whether claim 1 recites additional elements that integrate the judicial exception into a practical application. We discern no additional element (or combination of elements) recited in claim 1 that integrates the judicial exception into a practical application. *See* Memorandum at 54–55.

Claim 1 does not constitute an improvement to the functioning of a computer; rather, it merely adapts the abstract idea of processing bid information, previously performed mentally or manually, to an execution of steps performed by a computer. *See* Spec. ¶ 21 ("such information is manually corrected, manually tracked, and manually recorded as part of the bid certification process") Spec. ¶ 31 ("a vendor may submit data in various document formats, without the BCT vendor interface 80, e.g., either on paper or electronically, and, e.g., fed or scanned into the BCT server 14 using known methods"); MPEP §§ 2106.05(a), (h); s*ee, e.g.* Spec. ¶ 22; *see* Ans. 7–8. In other words, claim 1 is directed to the use of the computer merely as a tool to perform an existing process. Appellants' Specification

expressly states the claimed invention *automates* existing bid certification processes and improves "the use of time[,] resources, accuracy, and personal neutrality involved in the bid process." Spec. ¶ 22. These are improvements to the underlying abstract idea, using the computer merely as a tool. Appellants' argument that the claimed invention "improves information sharing between various parties" (Reply Br. 17, 20) merely supports the view that rather than being an improvement to the functioning of the computer, the improvement is to the abstract idea of processing bid information. Relying on a computer to perform routine tasks more quickly or more accurately is insufficient to render a claim patent eligible. *See Alice*, 573 U.S. 208 at 2359 ("use of a computer to create electronic records, track multiple transactions, and issue simultaneous instructions" is not an inventive concept); *Bancorp Servs., L.L.C. v. Sun Life Assur. Co. of Can. (U.S.)*, 687 F.3d 1266, 1278 (Fed. Cir. 2012) (a computer "employed only for its most basic function . . . does not impose meaningful limits on the scope of those claims").

Appellants argue "there is no counterpart in the pre-computer world to the problem addressed and solved by the claimed invention since [the] [computer infrastructure having computer executable code, one or more computing devices, a web-based interface using one of HTTP, FTP, SSH, and XML, and an application programming interface (API), among other features, to share information across multiple parties] [is] rooted in computer technology." App. Br. 12. According to Appellants, "the features of Appellants' claimed invention are heavily involved and implemented within computer technologies and assist in solving problems concerning computer technologies." *Id.* at 14. Appellants argue like the claims in *DDR Holdings,*

LLC v. Hotels.com, L.P., 773 F.3d 1245 (Fed. Cir. 2014), "the current claim very clearly pertains to a solution (e.g., a method for sharing information) based only in <u>computer technology to solve a problem, which has no counterpart outside of computer networks</u>." App. Br. 14–15.

Appellants' arguments are not persuasive. Although Appellants focus their arguments on the computer technology related elements in the claims, such as the computer infrastructure, computing devices, web-based interface, BCT server, and communications link, Appellants do not provide persuasive argument that these are anything other than generic computer components. *See* App. Br. 12–14; Reply Br. 1, 5–19; Spec. ¶¶ 23–31, Fig. 1. Appellants' Specification supports that the technology related elements are merely generic computer components. For example, Appellants Specification states "[t]he computing device (or BCT server) 14 can comprise any general purpose computing article of manufacture capable of executing computer program code installed thereon (e.g., a personal computer server, handheld device, etc.)." Spec. ¶ 27. Appellants describe HTTP, FTP, SSH, and XML as "*well known* data transfer languages and protocol." Spec. ¶ 31 (emphasis added). Appellants state "[m]any techniques for scanning, loading, and translating data are known in the existing art." Spec. ¶ 34. Appellants describe "[t]he communications link can comprise any combination of wired and/or wireless links." Spec. ¶ 28. Appellants do not direct our attention to anything in the Specification that indicates these claimed computer components and/or computer infrastructure are anything other than generic. *See* Spec. ¶¶ 23–31, Fig. 1. "[T]he mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible

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invention. Stating an abstract idea 'while adding the words "apply it"' is not enough for patent eligibility." *Alice*, 573 U.S. 208 at 2358 (citation omitted).

We also are not persuaded by Appellants' arguments that the claims are rooted in computer technology and have no counterpart outside of computer networks, like the claims in *DDR Holdings*. *See* Ans. 16–17. In *DDR Holdings*, the disputed claims solved an Internet-specific problem (i.e., third-party merchants luring a host website's visitor traffic away from the host website in response to clicking on a merchant's advertisement link displayed on the host site) with an Internet-based solution (i.e., generating a composite web page displaying product information from the third-party merchant, but retaining the host website's "look and feel") that was "necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks." *DDR Holdings*, 773 F.3d at 1257–1258. That is not the case here. As discussed previously, the claims merely recite an improvement to the underlying abstract idea of processing bid information. *See* Spec. ¶ 22 ("[i]mplementing the invention provides a software architecture, unique logic elements, and multiple embodiments to automate, enhance, and improve upon existing bid certification process systems and methods").

Therefore, we are not persuaded of error in the Examiner's determination that claim 1 is directed to an abstract idea.

Turning to step 2 of the *Alice/Mayo* framework, we look to whether claim 1 (a) adds a specific limitation or combination of limitations that are not well-understood, routine, conventional activity in the field, or (b) simply appends well-understood, routine, conventional activities previously known

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to the industry, specified at a high level of generality, to the judicial
exception. Memorandum at 56.

> The Examiner determines

> The claim(s) does/do not include additional elements that are
> sufficient to amount to significantly more than the judicial
> exception because the additional elements when considered
> both individually and as an ordered combination do not amount
> to significantly more that the abstract idea(s). The claims
> require the additional limitations of a computing device, central
> processing unit (CPU), computer readable storage device, bid
> certification tool (BCT) and servers. These generic computer
> components are claimed to perform their basic functions of
> storing, retrieving, processing, and displaying that are well-
> understood, routine, and conventional activities which amount
> to no more than implementing the abstract idea with a
> computerized programmed system.

Ans. 8.

Appellants argue "the Examiner has provided an incomplete analysis
and did not meet the required burden" because the "Examiner has not
identified the additional elements in the claim and has not explained why
they do not amount to significantly more than the exception." App. Br. 10;
see also Reply Br. 5–20. According to Appellants, "what the Examiner has
done is state that the additional features are generic computer components,"
but "the Examiner has not explained why these additional features are
generic." App. Br. 10–11. Appellants argue the "additional features allow
for the management of information across multiple parties, and further allow
these parties to manipulate that information using specific computing
functions with a web-based interface." App. Br. 11. Appellants argue "the
processes specifically require using one of hypertext transfer protocol

(HTTP), file transfer protocol (FTP), secure shell (SSH)[], and extensible markup language (XML) to manage the information." App. Br. 11.

We are not persuaded by Appellants' arguments and agree with the Examiner's findings and conclusions. *See Ans.* 7, 8, 14, 15. As discussed above, claim 1 is directed to processing bid information. Thus, even when viewed as a whole, nothing in the claim adds significantly more (i.e., an inventive concept) to the abstract idea. Similarly, as set forth above, the additional elements in the claim amount to no more than mere instructions to apply the exception using generic computer components, which is insufficient to provide an inventive concept. Appellants do not direct our attention to anything in the Specification that indicates the computer infrastructure and other computer components perform anything other than well-understood, routine, and conventional functions, such as receiving, processing, and storing data. *See buySAFE, Inc. v. Google, Inc.,* 765 F.3d 1350, 1355 (Fed. Cir. 2015) ("That a computer receives and sends information over a network—with no further specification—is not even arguably inventive"); *In re TLI Communications LLC Patent Litigation,* 823 F.3d 607, 614 (Fed. Cir. 2016) (server that receives data, extracts classification information from the received data, and stores the digital images insufficient to add an inventive concept); *Alice,* 573 U.S. 208. at 2359–2360 (receiving, storing, sending information over networks insufficient to add an inventive concept); *CyberSource Corp. v. Retail Decisions, Inc.,* 654 F.3d 1366, 1370 (Fed. Cir. 2011) (use of Internet to verify credit-card transaction does not add enough to abstract idea of verifying the transaction).

Accordingly, Appellants have not adequately explained how the claims are performed such that they are not routine, conventional functions of a generic computer. The claims at issue do not require any nonconventional computer components, or even a "non-conventional and non-generic arrangement of known, conventional pieces," but merely call for performance of the claimed information receiving, processing, and storing "on a set of generic computer components." *Bascom Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1349–52 (Fed. Cir. 2016).

We, therefore, sustain the Examiner's 35 U.S.C. § 101 rejection of claim 1. Appellants present substantially the same arguments for independent claims 15 and 19, which recite a system and a computer program product, respectively. App. Br. 15–26. These claims are no different in substance than independent method claim 1. *See Alice*, 573 U.S. 208 at 2360 ("system claims are no different than method claims"). Appellants do not separately argue dependent claims 2–6, 8, 10, 12, 14, and 20. App. Br. 12, 15, 21, 26. Therefore, for the same reasons, we sustain the Examiner's 35 U.S.C. § 101 rejection of independent claims 15 and 19 and dependent claims 2–6, 8, 10, 12, 14, and 20.

Dependent Claims 7, 9, 11, 13, and 16–18

Appellants argue claims 7, 9, 11, 13, and 16–18 include additional elements that amount to significantly more than the judicial exception, and "point out that the Examiner did not discuss these remaining features of the dependent claims." App. Br. 12, 19, 24; Reply Br. 11, 13.

These dependent claims merely recite further steps relating to evaluating bid information (claims 7, 9, 11), limitations relating to additional generic computer components (claims 16, 17), or the manual process of creating, maintaining, and deploying the computer infrastructure that performs the method or system (claims 13, 18). *See* App. Br. 30–33. Appellants have not persuasively explained why these additional claim limitations should amount to significantly more than the abstract idea. Accordingly, for the same reasons as set forth with respect to independent claim 1, we sustain the Examiner's 35 U.S.C. § 101 rejection of dependent claims 7, 9, 11, 13, 16–18.

DECISION

We affirm the Examiner's 35 U.S.C. § 101 rejection of claims 1–20.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED