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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/486,351	09/15/2014	Ina GOLDBERG	0076412-000306	3807
125578	7590	12/26/2018	EXAMINER	
MASTERCARD			LUDWIG, PETER L	
C/O Buchanan Ingersoll & Rooney PC			ART UNIT	
P.O. Box 1404			PAPER NUMBER	
Alexandria, VA 22314			3687	
			NOTIFICATION DATE	
			DELIVERY MODE	
			12/26/2018	
			ELECTRONIC	

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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* INA GOLDBERG, STEVEN JOEL JONAS, and MATTHEW  
ALCURI<sup>1</sup>

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Appeal 2017-006569  
Application 14/486,351  
Technology Center 3600

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Before JOSEPH A. FISCHETTI, BIBHU R. MOHANTY, and  
BRUCE T. WIEDER, *Administrative Patent Judges*.

MOHANTY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellants seek our review under 35 U.S.C. § 134 of the final rejection of claims 1, 3, 4, 9, 11–13, and 15–18 which are all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF THE DECISION

We AFFIRM.

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<sup>1</sup> MasterCard International Incorporated.

## THE INVENTION

The Appellants' claimed invention is directed to the estimation and evaluation of risk and spend profiles for a business (Spec., para. 1). Claim 1, reproduced below, is representative of the subject matter on appeal.

1. A computer-implemented method for electronically evaluating a small business profile, comprising:
  - receiving, by a receiving device of a processing server, from a payment network, transaction data for a plurality of payment transactions,
  - storing, in an entity database of the processing server, a plurality of entity profiles, wherein each entity profile is associated with an entity including (i) a unique entity identifier and (ii) a plurality of transaction data entries, each transaction data entry of the plurality of transaction entries including the transaction data associated with a payment transaction involving one of a plurality of transaction accounts associated with the associated entity;
  - storing, in a memory device of the processing server, at least one scoring algorithm;
  - receiving, by the receiving device of the processing server, a score request requesting the processing server to calculate at least one of a risk score and a behavior score, wherein the score request includes a set of one or more entity identifiers;
  - identifying, in the entity database of the processing server, a set of one or more entity profiles where the unique entity identifier included in each entity profile in the set of one or more entity profiles corresponds to the entity identifier in the set of one or more entity identifiers included in the received score request;
  - in response to receiving the score request, calculating, by a processing device of the processing server, the requested score for each entity associated with an entity profile in the identified set of one or more entity profiles by applying the at least one scoring algorithm, stored in the memory device of the processing server, to at least the transaction data included in one or more transaction data entries included in the respective entity profile, wherein the calculated score is representative of at least one of (i) a risk of the entity associated with the specific entity profile and (ii) a behavior score representative of a spend behavior of the entity associated with the specific

entity profile; and  
transmitting, by a transmitting device of the processing server,  
the calculated score for each entity associated with the entity profile in  
the identified set of one or more entity profiles in response to the  
received score request.

### THE REJECTIONS

The following rejections are before us for review:

1. Claims 1, 3, 4, 9, 11–13, and 15–18 are rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.
2. Claims 1, 3, 4, 9, 11–13, and 15–18 are rejected under 35 U.S.C. § 103(a) as unpatentable over Collier, Marsha (January 10, 2012), eBay® For Dummies®, 7<sup>th</sup> Edition (hereinafter “Collier”) and Beckman, US 8,065,227 B1, issued Nov. 22, 2011.

### FINDINGS OF FACT

We have determined that the findings of fact in the Analysis section below are supported at least by a preponderance of the evidence<sup>2</sup>.

### ANALYSIS

#### *Rejection under 35 U.S.C. § 101*

The Appellants argue that the rejection of claim 1 is improper because the claim is not directed to an abstract idea and is “significantly more” than the alleged abstract idea (App. Br. 6–19, Reply Br. 2–10).

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<sup>2</sup> See *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Patent Office).

In contrast the Examiner has determined that rejection of record is proper (Final Act. 2–5, Ans. 2–8).

We agree with the Examiner. 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: “laws of nature, natural phenomena, and abstract ideas” are not patentable. *See, e.g., Alice Corp. Pty Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014).

In judging whether claim 1 falls within the excluded category of abstract ideas, we are guided in our analysis by the Supreme Court’s two-step framework, described in *Mayo* and *Alice*. *Id.* at 2355 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1296–97 (2012)). In accordance with that framework, we first determine whether the claim is “directed to” a patent-ineligible abstract idea. If so, we then consider the elements of the 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 of the abstract idea. *Id.* This is a search for an “inventive concept” an element or combination of elements sufficient to ensure that the claim amounts to “significantly more” than the abstract idea itself. *Id.* The Court also stated that “the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention”. *Id.* at 2358.

Here, we determine that the claim is directed to the concept of estimating the risk and spend profiles for a business. This is a fundamental economic practice long prevalent in our system of commerce and an idea in itself, and is an abstract idea beyond the scope of § 101. *See Electric Power*

*Group, LLC v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016) where collecting information, analyzing it, and displaying results from certain results of the collection and analysis was held to be an abstract idea.

We next consider whether additional elements of the claim, both individually and as an ordered combination, transform the nature of the claim into a patent-eligible application of the abstract idea, e.g., whether the claim does more than simply instruct the practitioner to implement the abstract idea using generic computer components. We conclude that it does not. The Specification at paras. 75–85 describes using conventional computer components in a manner for their known functions.

Considering each of the claim elements in turn, the function performed by the computer system at each step of the process is purely conventional. Each step of the claimed method does no more than require a generic computer to perform a generic computer function.

We note the point about pre-emption (App. Br. 14–16, Reply Br. 6, 7). While pre-emption “might tend to impede innovation more than it would tend to promote it, ‘thereby thwarting the primary object of the patent laws’” (*Alice*, 134 S. Ct. at 2354 (quoting *Mayo Collaborative Servs.*, 132 S. Ct. at 1293)), “the absence of complete preemption does not demonstrate patent eligibility” (*Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015)). *See also 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.”).

The Appellants, in the Appeal Brief at pages 7–13, have cited to *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016) to show

that the claim is not abstract. But the claims in that case were not similar in scope to those here. In contrast, those claims were directed to a self-referential data table.

The Appellants, in the Reply Brief at pages 4–7, have also cited to *McRO, Inc. v. Bandai Namco Games America Inc.*, 837 F.3d 1299 (Fed. Cir. 2016). But the claims in that case are distinguished from this case in being directed to rules for lip sync and facial expression animation.

For these above reasons, the rejection of claim 1, and its dependent claims which are directed to similar subject matter, is sustained.

We reach the same conclusion as to independent system claims 9 and 13 and their dependent claims. Here, as in *Alice*, “the system claims are no different in substance from the method claims. The method claims recite the abstract idea implemented on a generic computer; the system claims recite a handful of generic computer components configured to implement the same idea.” *Alice* 134 S. Ct. at 2351. “[T]he mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention. Stating an abstract idea ‘while adding the words ‘apply it’” is not enough for patent eligibility.” *Id.* at 2358 (quoting *Mayo*, 132 S. Ct. at 1294).

*Rejection under 35 U.S.C. § 103(a)*

The Appellants argue that the rejection of claim 1 is improper because the cited prior art does not disclose claim limitations requiring:

***receiving***, by the receiving device of the processing server, ***a score request requesting the processing server to calculate at least one of a risk score and a behavior score***, wherein the score request includes a set of one or more entity identifiers;...

*in response to receiving the score request, calculating, by a processing device of the processing server, the requested score for each entity associated with an entity profile in the identified set of one or more entity profiles by applying the at least one scoring algorithm,...*

(App. Br. 20, 21, emphasis original).

In contrast, the Examiner has cited to the prior art as disclosing the above argued claim limitations and cited in particular to Collier at Fig. 4–11 and Beckman at col. 5, lines 5–67 (Ans. 9–11).

We agree with the Examiner and adopt the findings made in this regard. The Appellants argue, for example, that Collier’s calculated score is “**based on comments that people leave about the user**” (App. Br. 23, emphasis original). The Appellants also argue that the feedback rating in Collier is “**calculated based on positive and negative reviews that a user has received from other users**” (Reply Br. 12, emphasis original). However, the argued claim limitation for a “behavior score” is broad enough to include the feedback and review system of Collier which indicates the user’s behavior to others and meets the argued claim limitation. The Appellants also argue that in Collier, the score is “continuously” displayed rather than being updated in response to a requested score (App. Br. 24). However, Beckman at col. 7, lines 13-15 discloses custom models can include behavior models when a new score is requested.

As the cited rejection discloses a combination that suggests the argued claim limitations the rejection of claim 1 is sustained. The Appellants have provided similar arguments for claims 9, 13, and the remaining claims, and the rejection of these claims is sustained as well.

### CONCLUSIONS OF LAW

We conclude that Appellants have not shown that the Examiner erred in rejecting claims 1, 3, 4, 9, 11–13, and 15–18 under 35 U.S.C. § 101.

We conclude that Appellants have not shown that the Examiner erred in rejecting claims 1, 3, 4, 9, 11–13, and 15–18 under 35 U.S.C. § 103(a) as listed in the Rejections section above.

### DECISION

The Examiner's rejection of claims 1, 3, 4, 9, 11–13, and 15–18 is sustained.

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