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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/082,858	11/18/2013	Dawid Nowak	413147-US-NP AVA078PA	2697
136582	7590	05/01/2019	EXAMINER	
STEVENS & SHOWALTER, LLP Box AVAYA Inc. 7019 Corporate Way Dayton, OH 45459-4238			ULLAH, ARIF	
			ART UNIT	PAPER NUMBER
			3683	
			NOTIFICATION DATE	DELIVERY MODE
			05/01/2019	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* DAVID NOWAK, JOSEPH SMYTH,  
and PAUL KELLY

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Appeal 2017-007999  
Application 14/082,858<sup>1</sup>  
Technology Center 3600

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Before MICHAEL J. STRAUSS, JEREMY J. CURCURI, and  
DAVID J. CUTITTA II, *Administrative Patent Judges*.

CUTITTA, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant seeks our review under 35 U.S.C. § 134(a) of the Examiner's final decision rejecting claims 1, 2, 4–14, and 16–21, the only claims pending in the application.<sup>2</sup> We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> Avaya, Inc. (“Appellant”) is the Applicant, as provided for under 37 C.F.R. § 1.46, and is also identified in the Brief as the real party in interest. *See* Appeal Br. 4.

<sup>2</sup> Claims 3 and 15 are cancelled. *See* Appeal Br. 6.

STATEMENT OF THE CASE

*Invention*

Appellant's invention relates to "predicting contact center activity and adjusting operational parameters of the contact center based on such predictions." Spec. ¶ 2.<sup>3</sup>

*Exemplary Claim*

Claim 1 is reproduced below with bracketed material added.

1. A system comprising:

[a] a processor coupled to memory, wherein the processor executes program code stored in the memory to implement:

[b] a traffic generator that generates simulated, predictive contact center traffic patterns based upon data received from a corresponding contact center that represents current contact traffic that has entered the contact center, and based upon historical contact center data from an aggregated historical data source;

[c] a contact center emulator that emulates the corresponding call center and generates a forecast of contact center behavior by correlating:

[d] a current state of operational data received from the corresponding contact center so that the emulation mirrors the current operation of the contact center;

[e] the simulated, predictive traffic patterns from the traffic generator; and

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<sup>3</sup> Our Decision refers to: (1) Appellant's Specification filed November 18, 2013 ("Spec."); (2) the Final Rejection mailed May 9, 2016 ("Final Act."); (3) the Appeal Briefs filed October 20 and December 7, 2016 ("Appeal Br."); (4) the Examiner's Answer mailed March 10, 2017 ("Ans."); and (5) the Reply Brief filed May 8, 2017 ("Reply Br.").

[f] historical data from the aggregated historical data source; and

[g] a control unit that evaluates the generated forecast received from the contact center emulator in view of the current state of operational data received from the corresponding contact center and determines in response to the evaluation, whether to execute a predefined action that communicates back to the contact center.

Appeal Br. 33, Claims Appendix.

#### REFERENCES

The Examiner relies upon the following prior art<sup>4</sup> in rejecting the claims on appeal:

Kosiba	US 2002/0184069 A1	Dec. 5, 2002
Carrier	US 8,078,529 B1	Dec. 13, 2011
Galvin	US 2013/0191185 A1	July 25, 2013
Riahi	US 2014/0314225 A1	Oct. 23, 2014

#### REJECTIONS

Claims 1, 2, 4–14, and 16–21 stand rejected under 35 U.S.C. § 101 as being directed to a judicial exception without adding significantly more. *See* Final Act. 5–10.

Claims 1, 2, 4, 5, 7–14, 16–19, and 21 stand rejected under 35 U.S.C. § 103 as being unpatentable over the combination of Kosiba and Galvin. *See* Final Act. 10–37.

Claim 6 stands rejected under 35 U.S.C. § 103 as being unpatentable over the combination of Kosiba, Galvin, and Carrier. *See* Final Act. 37–41.

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<sup>4</sup> All citations to the references use the first-named inventor only.

Claim 20 stands rejected under 35 U.S.C. § 103 as being unpatentable over the combination of Kosiba, Galvin, and Riahi. *See* Final Act. 41–43.

Our review in this appeal is limited to the above rejections and the issues raised by Appellant. Arguments not made are waived. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2016).

## DISCUSSION

### Rejection Under 35 U.S.C. § 101

#### *Standard for Patent Eligibility*

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*. *Alice*, 573 U.S. 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)). Concepts determined to be patent eligible include physical and chemical processes, such as “molding rubber products” (*Diamond v. Diehr*, 450 U.S. 175, 191 (1981)); “tanning, dyeing, making water-proof cloth, vulcanizing India rubber, smelting ores” (*id.* at 182 n.7 (quoting *Corning v. Burden*, 56 U.S. 252, 267–68 (1853))); and manufacturing flour (*Benson*, 409 U.S. at 69 (citing *Cochrane v. Deener*, 94 U.S. 780, 785 (1876))).

In *Diehr*, the claim at issue recited a mathematical formula, but the Supreme Court held that “[a] claim drawn to subject matter otherwise statutory does not become nonstatutory simply because it uses a mathematical formula.” *Diehr*, 450 U.S. at 176; *see also id.* at 191 (“We view respondents’ claims as nothing more than a process for molding rubber products and not as an attempt to patent a mathematical formula.”). Having said that, the Supreme Court also indicated that a claim “seeking patent protection for that formula in the abstract . . . is not accorded the protection of our patent laws,[] and this principle cannot be circumvented by attempting to limit the use of the formula to a particular technological environment.” *Id.* (citing *Benson* and *Flook*); *see, e.g., id.* at 187 (“It is now commonplace that an application of a law of nature or mathematical formula to a known structure or process may well be deserving of patent protection.”).

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.*

*USPTO January 7, 2019 Revised Section 101 Memorandum*

The USPTO recently published revised guidance on the application of § 101. *See 2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019 (“Memorandum”)). Under the Memorandum 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, and conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.

### *Analysis*

Appellant argues the claims as a group. *See* Appeal Br. 17. We select independent claim 1 as exemplary of Appellant’s arguments for the group. *See* 37 C.F.R. § 41.37(c)(1)(iv)(2016).

The Examiner determines “the claimed invention is directed to a judicial exception (i.e., a law of nature, a natural phenomenon, or an abstract idea) without significantly more.” Final Act. 5.

Appellant presents several arguments against the section 101 rejection. Applying the guidance set forth in the Memorandum, we are not persuaded of Examiner error for the reasons discussed below. We adopt the nomenclature for the analysis steps used in the Memorandum.

### STEP 1

Section 101 provides that “[w]hoever 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 therefor, subject to the conditions and requirements of this title.” 35 U.S.C. § 101. Initially, we determine that independent claim 1 recites “[a] system.” Appeal Br. 33. As such, claim 1 is directed to a statutory class of invention within 35 U.S.C. § 101, i.e., a machine.

STEP 2A Prong 1

Under Step 2A, Prong 1 of the Memorandum, we must determine whether claim 1, being directed to a statutory class of invention, nonetheless falls within a judicial exception.

The Examiner determines claim 1 recites “collecting metric data associated with a contact center,” which is “analogous to organizing information through mathematical correlations” and is, thus, “a mental process.” Final Act. 5.

Appellant argues that claim 1 is not directed to an abstract idea because claim 1: (1) recites “[d]ata is being generated for emulations and forecasting . . . which cannot be performed merely by thinking”; (2) “includes performing a predefined action (e.g., controlling a component of the control center, issuing notifications, modifying operational parameters, etc.), which cannot be performed merely by the human mind”; and (3) “is similar to *McRO* because the traffic patterns generated in the claim are “similar to the data stream generated by *McRO*.” Appeal Br. 19 (citing *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299 (Fed. Cir. 2016)).

We find Appellant’s arguments unpersuasive. Claim 1 recites a “system” that uses a processor [a] to implement steps including: [b] “generat[ing] simulated, predictive contact center traffic patterns . . . that represents current contact traffic;” [c] “emulat[ing] the corresponding call center and generates a forecast of contact center behavior by correlating” data recited in limitations [d], [e], and [f], and [g] “evaluat[ing] the generated forecast . . . in view of the current state of operational data received from the corresponding contact center and determin[ing] in

response to the evaluation, whether to execute a predefined action that communicates back to the contact center.” Appeal Br. 28.

Apart from generic hardware, such as recited in limitation [a] (“a processor coupled to memory”) and [b] (“contact center ”), limitations [b] - [g] recite [b] “generat[ing] simulated, predictive contact center traffic patterns”; [c] “generat[ing] a forecast of contact center behavior by correlating:” [d] “a current state of operational data received from the corresponding contact center”; [e] “simulated, predictive traffic patterns” and [f] “historical data”; and [g] “evaluat[ing] the generated forecast received from the contact center emulator in view of the current state of operational data received from the corresponding contact center and determin[ing] in response to the evaluation, whether to execute a predefined action that communicates back to the contact center.” These limitations, under their broadest reasonable interpretation, recite managing a contact center because the limitations all recite operations that would ordinarily be performed by a supervisor in managing a contact center. For example, the supervisor would [b] generate predictive contact center traffic patterns by knowing, based on experience, that calls are received at a particular rate during various hours of operation (e.g., a rate of ten calls per hour in the first hour of business), [c] generate a forecast of contact center behavior by correlating: (1) a current state of operation data observed while monitoring the contact center ([d]); (2 ) the supervisor’s knowledge and experience of traffic patterns ([e]); and (3) historical data ([f]). The supervisor would then [g] evaluate the generated forecast in view of a current state of operational data and apply appropriate judgment to formulate a response, i.e., mentally determine whether to execute a predefined action.

Managing a call center to “allocate resources in an efficient manner” is an activity long practiced in commerce. Spec. ¶¶ 6, 7 (“supervisors may dynamically modify the operational parameters of a contact center in order to handle unanticipated traffic variations or in response to events that impact contact center resources.”). In addition, allocating resources based on forecasted demand, e.g., allocating call center resources by forecasting call volume, is also an activity long used in commerce. Thus, apart from extra-solution activity and generic hardware (as discussed in Step 2B below), the claimed invention is analogous to pre-Internet commercial transactions between humans in which “supervisors . . . dynamically modify the operational parameters of a contact center in order to handle unanticipated traffic variations” to thereby “maximize contact center performance and profitability.” Spec. ¶¶ 6, 7. For example, Appellant’s Specification describes the problem the claimed invention seeks to address as “assisting contact center personnel in optimizing contact center efficiency and reducing contact center operating costs.” Spec. ¶ 8. Appellant, thus, seeks to automate supervisor decision making and judgment in connection with the allocation of call center resources, which is a fundamental economic activity long prevalent in our system of commerce and is similar to other types of “organizing human activity” that have been found to be abstract ideas by the Supreme Court and the Federal Circuit. *See, e.g., Alice*, 573 U.S. at 220 (intermediated settlement); *see also OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015) (offer-based price optimization); *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093–94 (Fed. Cir. 2016) (collecting and analyzing information and notifying a user based on the analysis); *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir.

2014) (“creating a contractual relationship—a ‘transaction performance guaranty’”); *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed Cir. 2014) (“showing an advertisement before delivering free content.”); and *Accenture Global Services, GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1344–45 (Fed.Cir.2013) (generating tasks for processing an insurance claim).

We also agree with the Examiner’s determination that claim 1 recites a mental process. *See* Final Act. 5. Our reviewing courts have determined certain claims limited to manipulating information to be abstract. *See Content Extraction and Transmission LLC v. Wells Fargo Bank, National Ass’n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014) (“collecting data, . . . recognizing certain data within the collected data set, and . . . storing that recognized data in a memory.”); *see also Classen Immunotherapies, Inc. v. Biogen IDEC*, 659 F.3d 1057 (Fed. Cir. 2011) (collecting and comparing known information); *Parker v. Flook*, 437 U.S. at 98 (method for calculating alarm limit values during catalytic conversion processes, in which only novel feature was mathematical formula, did not describe patentable subject matter). In view of the relevant case law, we agree with the Examiner that claim 1’s use of a processor for automating mental tasks (*see* Final Act. 6–7), is an example of concepts performed in the human mind as mental processes because the steps mimic human thought processes, perhaps with paper and pencil. *See Bancorp Services, L.L.C. v. Sun Life Assur. Co. of Canada (U.S.)*, 687 F.3d 1266, 1279 (Fed. Cir. 2012), cert. denied, 134 S.Ct. 2870 (2014) (“Using a computer to accelerate an ineligible mental process does not make that process patent-eligible.”); *see also* Memorandum n.14 (*citing Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1318

(Fed. Cir. 2016) (“[W]ith the exception of generic computer-implemented steps, there is nothing in the claims themselves that foreclose them from being performed by a human, mentally or with pen and paper.”)).

Manipulating and analyzing information by steps people may go through in their minds, without more, is essentially a mental process within the abstract-idea category.

Accordingly, we agree with the Examiner that claim 1 recites a mental process, as provided for in the Memorandum. We further conclude that claim 1 recites a fundamental economic practice, which is one of certain methods of organizing human activity identified in the Memorandum, and thus an abstract idea.

#### STEP 2A Prong 2

Next, we determine whether the claim is directed to the abstract concept itself or whether it is instead directed to some technological implementation or application of, or improvement to, this concept, i.e., whether the claim is integrated into a practical application. *See, e.g., Alice*, 573 U.S. at 223 (discussing *Diehr*, 450 U.S. at 175).

Applying step 2 of the *Alice/Mayo* analysis, the Examiner identifies the additional limitations other than the abstract idea, such as the processor and the memory, and determines they merely recite “generic computing elements” and thus do not include “meaningful limitations” beyond the computer implementation of the abstract idea. Final Act. 7. The Examiner further determines the claim does not recite “improvements to another technology or technical field; improvements to the functioning of the computer itself; applying the judicial exception with, or by use of, a

particular machine; [or] effecting a transformation or reduction of a particular article to a different state or thing.” *Id.*

Appellant argues the claimed simulated contact center traffic patterns are “similar to the data stream generated by *McRO*” and thus “claim 1 of the present application includes similar functions that were found not to be directed to an abstract idea and thus patent-eligible in *McRO*.” Appeal Br. 19–20 (citing *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299 (Fed. Cir. 2016)).

Appellant’s argument based on *McRO* is unpersuasive because Appellant’s claim 1 is unlike the claims in *McRO*. The patent at issue in *McRO* describes that, prior to the claimed invention, character animation and lip synchronization were accomplished by human animators, with the assistance of a computer, and involved the use of a so-called “keyframe” approach in which animators set appropriate parameters, i.e., morph weights, at certain important times, i.e., in order to produce accurate and realistic lip synchronization and facial expressions. *McRO*, 837 F.3d. at 1305. Animators knew what phoneme a character pronounced at a given time from a time-aligned phonetic transcription (a “timed transcript”). *Id.* In accordance with the prior technique, animators, using a computer, thus, manually determined the appropriate morph weight sets for each keyframe based on the phoneme timings in the timed transcript. *Id.*

Thus, in *McRO*, the improvement in computer animation was realized by using “rules, rather than artists [i.e., human animators], to set the morph weights and transitions between phonemes” (*id.* at 1313 (citation omitted)), i.e., in *McRO*, the invention used “rules to automatically set a keyframe at the correct point to depict more realistic speech, achieving results similar to

those previously achieved manually by animators.” *Id.* at 1307. The rules in *McRO*, thus, allowed the *computer* to solve a technological problem by producing accurate and realistic synchronization in animated characters that could only previously be produced by humans.

In contrast with *McRO*, Appellant does not identify *any* specific rules in the claim that are used by the claimed processor to solve a technological problem, let alone identify specific rules that act in the same way as the specific rules enabling the computer in *McRO* to generate computer animated characters. Rather, Appellant’s claim 1 broadly recites evaluating forecast data “in view of the current state of operational data” and “determines in response to the evaluation, whether to execute a predefined action that communicates back to the contact center.” Appeal Br. 33. No technological rules are identified in performing the claimed evaluating step. *See Id.* We, therefore, find insufficient evidence of record to support the argument that Appellant’s claim 1 is similar to the claim in *McRO*, where computers were unable to make certain subjective determinations, i.e., regarding morph weight and phoneme timings, which could only be made prior to the *McRO* invention by human animators.

Also, the solution Appellant seeks to provide via claim 1 is to a business problem, not a technical problem. Rather than addressing a problem unique to the technology in which the solution is implemented, Appellant’s claim 1 merely automates, using generic computer technology, a pre-internet process in which a supervisor “dynamically modif[ies] the operational parameters of a contact center in order to handle unanticipated traffic variations” to thereby “maximize contact center performance and profitability.” Spec. ¶¶ 6, 7. As set forth in the Specification, the

“reactionary nature of contact center management [by a supervisor] can result in valid decisions being made too late or invalid decisions being made too early . . . resulting in increased cost to the contact center operator.”

Spec. ¶ 7. Thus, claim 1 is directed to enhancing contact center management, which, as claimed, is not an improvement to technology. *See* MPEP § 2106.05 (a).

In addition, because a particular computer is not required, the claim also does not define or rely on a “particular machine.” *See* MPEP § 2106.05 (b). Further, the method does not transform matter; at best it transforms information. *See* MPEP § 2106.05 (c); *see also* *Gottschalk v. Benson*, 409 U.S. 63, 71–72 (1972) (holding that a computer based algorithm that merely transforms data from one form to another is not patent-eligible). Instead, the claim simply manipulates and outputs data. As such, the claim has no other meaningful limitations (*see* MPEP § 2106.05 (e)), and merely recites instructions to execute the abstract idea on a computer processor (*see* MPEP § 2106.05 (f)).

We, therefore, determine claim 1 is not directed to a specific improvement in computer technological implementation or otherwise integrated into a practical application and thus is *directed to* a judicial exception.

#### STEP 2B

Next, we determine whether the claim includes additional elements that provide significantly more than the recited judicial exception, thereby providing an inventive concept. *Alice*, 573 U.S. at 217–18 (quoting *Mayo*, 566 U.S. at 72–73).

The Examiner finds the additional limitations of claim 1 “are generic computing elements performing generic computing functions and, as a result, do not amount to significantly more” than the claimed abstract idea. Final Act. 7.

Appellant argues “even if claim 1 were to be deemed as directed to an abstract idea, claim 1 is an improvement in the technological field of contact centers and is something significantly more than a mental process or a mathematical function.” Appeal Br. 20.

We find Appellant’s argument unpersuasive because, other than the abstract idea, claim 1 recites [a] “a processor coupled to memory” and [b] receiving data “from a corresponding contact center.” Appeal Br. 33, Claims Appendix. Considered both separately and as an ordered combination, the additional limitations add nothing inventive to the claim. As noted above, limitation [a] merely recites generic computing components for implementing the claimed abstract idea (*see* Spec. ¶ 65) and limitation [b], apart from the abstract data generation, merely recites receiving data from a contact center, which is a mere pre-solution data gathering activity. *See OIP Techs.*, 788 at 1363 (gathering statistics about how potential customers responded to the offers; the statistics are then used to calculate an optimized price).

Appellant argues claim 1 recites significantly more because “there is some modification to the contact center (e.g., controlling a component of the control center, issuing notifications, modifying operational parameters of the contact center, etc.).” Appeal Br. 20. Claim 1 recites [g] “a control unit that . . . determines in response to the evaluation, whether to execute a predefined action that communicates back to the contact center.” Appeal Br. 33. We

disagree with Appellant that “there is some modification to the contact center” (*id.* at 20) because determining whether to execute a predefined action is not the same thing as executing an action. Thus, to the extent Appellant argues limitation [g] adds significantly more to the abstract idea (*see* Appeal Br. 20), this limitation is not an additional element beyond the abstract idea, but rather is directed to the abstract idea itself as noted by the Examiner. *See* Ans. 6–7; *see also* Memorandum (Instructing that additional recited element(s) should be evaluated in Alice/Mayo step two to determine whether they: (1) add specific limitation(s) that are not well-understood, routine, and conventional in the field; or (2) simply append well-understood, routine, and conventional activities previously known to the industry.) (citing MPEP § 2106.05(d)). Thus, we do not find that the additional recited elements—considered individually and as an ordered combination—add significantly more to the abstract idea to provide an inventive concept under Alice/Mayo step two. *See Alice*, 573 U.S. at 221; *see also* Memorandum.

In conclusion, because Appellant’s representative claim 1 is directed to a patent-ineligible abstract concept and does not recite something “significantly more” under the *Alice* analysis, we sustain the rejection of this claim under 35 U.S.C. § 101 as being directed to non-patentable subject matter. The rejection of the other claims in the group is sustained for the same reasons.

Next, Appellant argues dependent “claims 4, 11, and 17 further define rules for generating the simulated traffic patterns, similar to the rules for animating a mouth in *McRO*.” Appeal Br. 21. We are unpersuaded of Examiner error because Appellant’s identified rules in the dependent claims are not used by the claimed processor to solve a technological problem.

Rather, the additional recitations of short, medium, and long term forecasts relate to a business problem; automating, using generic computer technology, a pre-internet process in which a supervisor “dynamically modif[ies] the operational parameters of a contact center in order to handle unanticipated traffic variations” to thereby “maximize contact center performance and profitability.” Spec. ¶¶ 6, 7. Nor has Appellant established the claimed rules act in the same way as the specific rules enabling the computer in *McRO* to generate the computer animated characters. We, therefore, sustain the rejection of claims 4, 11, and 17 under 35 U.S.C. § 101.

Next, Appellant argues “claims 2, 9, and 10 explicitly recite predefined actions executed based on forecasts concerning the contact center.” Appeal Br. 21. We are unpersuaded of Examiner error because Appellant fails to persuade us that these additional limitations are sufficient to integrate the judicial exception into a practical application. *See* MPEP § 2106.05(a)–(c), (e)–(h). We, therefore, sustain the rejection of claims 2, 9, and 10 under 35 U.S.C. § 101.

*Rejection Under 35 U.S.C. § 103*

The Examiner finds Kosiba teaches or suggests “a traffic generator that generates simulated, predictive contact center traffic patterns based upon data received from a corresponding contact center that represents current contact traffic that has entered the contact center,” as recited in claim 1. *See* Final Act. 10–16; Ans. 7–10. Specifically, the Examiner relies on Kosiba’s discussion of planning and analysis system 205 receiving automatic feeds of data from automatic call distributor (“ACD”) 110 and

customer information system (“CIS”) 125. *See* Final Act. 11–12; Ans. 8–9 (citing Kosiba ¶¶ 74, 86, 87 and Fig. 2).

Appellant disputes the Examiner’s factual findings, arguing “the claimed invention mirrors or tracks current contact traffic activity that is taking place within the corresponding contact center” but “*Kosiba* relies upon historical data to describe workflow relationships between management and contact center performance.” Appeal Br. 27.

We are unpersuaded of Examiner error. Appellant does not dispute the Examiner’s finding that Kosiba’s planning and analysis system 205 teaches generating “simulated, predictive contact center traffic patterns,” as recited in the claimed traffic generator. Kosiba further discloses that “[s]etting up automatic feeds to process the data captured by the ACD and CIS (step 700) is necessary to ensure that the planning and analysis system 205 uses the *most current* and accurate data in its calculations.” Kosiba ¶ 86 (emphasis added). The Examiner also finds Kosiba teaches “[t]he daily call interval reports produced by the ACD 110 include quarter hour, half hour, or hourly summaries of contact center performance.” *See* Ans. 8 (citing Kosiba ¶ 74). Appellant fails to provide sufficient evidence or persuasive reasoning to persuade us that Kosiba’s quarter hour call-interval reports provided to Kosiba’s planning and analysis system 205 or Kosiba’s teaching that “planning and analysis system 205 uses the most current . . . data in its calculations” are insufficient to teach or suggest receiving data that represents “current contact traffic,” as recited in claim 1. *See* Kosiba ¶¶ 74, 86.

The Examiner finds Kosiba’s teaches “a contact center emulator . . . correlating: a current state of operational data received from the

corresponding contact center so that the emulation mirrors the current operation of the contact center,” as recited in claim 1. *See* Final Act. 13–14; Ans. 8–9 (citing Kosiba ¶¶ 3, 33, 50, 74, and Fig. 2).

Appellant does not dispute the Examiner’s finding that Kosiba’s “call interval reports and call-by-call data” teach operational data received from the corresponding contact center, but instead argues:

Kosiba do[es] not teach or suggest “correlating: a current state of operational data received from the corresponding contact center ***so that the emulation mirrors the current operation of the contact center***” as claimed, because the call interval data can be a day old (thus, not current (i.e., not mirroring the current operation of the contact center as defined in claim 1)). In other words, in Kosiba, “current” means a day old, while “current” in claim 1 means that the “emulation mirrors the current operation of the contact center.” Thus, Kosiba does not teach that the current data mirrors the contact center.

Appeal Br. 29.

Appellant’s argument that day old data is not current data (*id.*) is not persuasive because it does not address the Examiner’s reliance on quarter-hour call-interval reports or the Examiner’s finding that Kosiba teaches using the “most current” data in its calculations. Kosiba ¶ 86; *see* Ans. 8.

Appellant further argues that “even though the summaries may be created every 15 minutes, those summaries may be aggregated to produce the daily report and are then reported daily. Therefore, the ‘most current’ data is still reported daily.” Reply Br. 4. This argument is not supported by evidence found in the record and is, instead, only attorney argument which “cannot take the place of evidence.” *In re Pearson*, 494 F.2d 1399, 1405 (CCPA 1974).

Appellant, thus, fails to provide sufficient evidence or reasoning to persuade us Kosiba’s quarter hour call-interval reports provided to Kosiba’s planning and analysis system 205 or Kosiba’s teaching that “planning and analysis system 205 uses the most current . . . data in its calculations” are insufficient to teach or suggest “a contact center emulator . . . correlating: a current state of operational data received from the corresponding contact center so that the emulation mirrors the current operation of the contact center,” as recited in claim 1. *See* Kosiba ¶¶ 74, 86.

We, therefore, sustain the Examiner’s 35 U.S.C. § 103 rejection of claim 1, and of independent claims 8 and 14, which are not argued separately with particularity 1. *See* Appeal Br. 30. We likewise sustain the rejections of dependent claims 2, 4–7, 9–13, and 16–21, which are also not argued separately. *Id.* at 30–31.

#### DECISION

We affirm the Examiner’s decision to reject claims 1, 2, 4–14, and 16–21 under 35 U.S.C. § 101.

We affirm the Examiner’s decision to reject claims 1, 2, 4–14, and 16–21 under 35 U.S.C. § 103.

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