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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* GUY SCHORY, STEPHEN RICHARD THOMAS,  
STEPHEN KENNETH LOBO, and FRANK RUSSO

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Appeal 2017-008764  
Application 14/022,047<sup>1</sup>  
Technology Center 3600

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Before JOSEPH A. FISCHETTI, ANTON W. FETTING, and BRUCE T.  
WIEDER, *Administrative Patent Judges*.

FISCHETTI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1, 4-8, 11-15, 18, 19 and 21. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF DECISION

We affirm.

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<sup>1</sup> Appellants identify eBay Inc. as the real party in interest. App. Br. 2.

## THE INVENTION

Appellants state, that the application “relates generally to the technical field of online marketing, and in one specific example, to customizing and online shopping experience for a user based on information about the user.” Spec. ¶ 3.

Claim 1, reproduced below, is representative of the subject matter on appeal.

1. A method of customizing an online shopping experience for a user by selecting at a marketplace system a user interface relating to a product from a plurality of user interfaces relating to the product for transmission to a user system computer based on a correspondence between an element of the user interface relating to the product and an element of a user interface being presented on the user system computer, the method comprising:

receiving at the marketplace system a request from the user system computer to transmit instructions for a rendering by the user system computer of the user interface relating to the product, the request being generated based on an interaction with a user interface presented on the user system computer, the instructions being stored as data items in a database of the marketplace system;

selecting the user interface relating to the product from the plurality of user interfaces relating to the product stored in the database, the selecting based on a determination that a rendering of the user interface relating to the product by the user system computer has a probability of increasing revenues of the marketplace system, the selecting further based on a determination that renderings of other user interfaces relating to the product by the user system have other probabilities of increasing revenues of a marketplace system and a determination that the first probability is greater than each of the other probabilities, the determination of the probability based on a conversion rate of the user interface relating to the product, the conversion rate reflecting a number of renderings

of the user interface in comparison to a number of sales of specimens of the product relating to the renderings, the revenues of the marketplace system based on the sales of the specimens of the product, the determination based on an identification that the element of the user interface relating to the product corresponds to the element of the user interface being presented on the user system computer; and transmitting to the user system computer the instructions for the rendering by the user system computer of the user interface relating to the product, one or more modules incorporated into the marketplace system to configure the marketplace system to perform the receiving, selecting, and transmitting, the one or more modules implemented by one or more processors of the marketplace system.

#### REFERENCE

The Examiner relies upon the following prior art as evidence of unpatentability:

Brunswig ("Brunswig")	US 2008/0148166 A1	June 19, 2008
Strand	US 8,375,305 B1	Feb. 12, 2013

#### THE REJECTION

The following rejection is before us for review.

Claims 1, 4–8, 11–15, 18, 19, and 21 are rejected under 35 U.S.C. § 101, because 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.

## FINDINGS OF FACT

We adopt the Examiner’s findings as set forth on pages 5–8 in the Final Office Action and on pages 4–7 in the Examiner’s Answer, concerning only the 35 U.S.C. § 101 rejection.

### 35 U.S.C. § 101 REJECTION

We will affirm the rejection of claims 1, 4–8, 11–15, 18, 19, and 21 under 35 U.S.C. § 101.

The Appellants argue claims 1, 4–8, 11–15, 18, 19, and 21 as a group, and we select claim 1 as the representative claim for this group (App. Br. 20), and so the remaining claims stand or fall with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2015).

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: “[I]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 id.* 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, 67 (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 (1854))); 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., Diehr*, 450 U.S. 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.* (alterations in original) (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 United States Patent and Trademark Office (“USPTO”) recently published revised guidance on the application of § 101. *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019), (<https://www.govinfo.gov/content/pkg/FR-2019-01-07/pdf/2018-28282.pdf>) (“Guidance”). Under the 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* Manual of Patent Examining Procedure (“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 (designated as Step 2B in the Guidance).

*See* Guidance.

The U.S. Court of Appeals for the Federal Circuit has explained that “the ‘directed to’ inquiry applies a stage-one filter to claims, considered in light of the [S]pecification, based on whether ‘their character as a whole is directed to excluded subject matter.’” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016) (quoting *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015)). It asks whether the focus of the claims is on a specific improvement in relevant technology or on a process that itself qualifies as an “abstract idea” for which computers are invoked merely as a tool. *See id.* at 1335–36.

In so doing, as indicated above, we apply a “directed to” two prong test: 1) evaluate whether the claim recites a judicial exception, and 2) if the claim recites a judicial exception, evaluate whether the claim “appl[ies], rel[ies] on, or use[s] the judicial exception in a manner that imposes a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception.” Guidance at 53; *see also* MPEP § 2106.05(a)–(c), (e)–(h).

The preamble states:

A method of customizing an online shopping experience for a user by selecting at a marketplace system a user interface relating to a product from a plurality of user interfaces relating to the product for transmission to a user system computer based

on a correspondence between an element of the user interface relating to the product and an element of a user interface being presented on the user system computer....

The Specification states:

the clicking of the online advertisement may direct the user to a separate web site related to the subject of the advertisement (e.g., a product) without taking into consideration information about the user (e.g., the Internet or geographic location of the user or a behavior of the user with respect to a web site hosting the particular web page) or a likelihood that the web site presented to the user (as opposed to other web sites) would induce the user to conclude a transaction related to the subject of the advertisement. The end result is the user is less likely to conclude a transaction related to the subject of the advertisement than if the user had been directed to a customized shopping experience (e.g., a web site) that was selected from a group of customized shopping experiences and tailored as much as possible to the user (e.g., based on a profile of the user with respect to the web site or based on success rates of each of the group of customized shopping experiences in inducing other users to conclude other transactions related to the subject of the advertisement).

Specification ¶ 3.

Understood in light of the Specification, the body of claim 1, recites, in pertinent part:

[a)] receiving at the marketplace system a request from the user system computer to transmit instructions...relating to the product, the request being generated based on an interaction with a user interface....,

[b)] selecting the user interface relating to the product from the plurality of user interfaces relating to the product..., the selecting based on a determination that a rendering of the user interface relating to the product...has a probability of increasing revenues of the marketplace system, the selecting further based on a determination that renderings of other user interfaces

relating to the product by the user system have other probabilities of increasing revenues of a marketplace system and a determination that the first probability is greater than each of the other probabilities, the determination of the probability based on a conversion rate of the user interface relating to the product, the conversion rate reflecting a number of renderings of the user interface in comparison to a number of sales of specimens of the product relating to the renderings, the revenues of the marketplace system based on the sales of the specimens of the product, the determination based on an identification that the element of the user interface relating to the product corresponds to the element of the user interface being presented on the user system computer;

[(c)] transmitting... the instructions for the rendering . . . .

Accordingly, the Examiner found that the “claims are directed to the abstract idea of providing information to users which are considered to be a method of organizing human activities and/or a fundamental economic practice which are abstract ideas ineligible for patentability.” (Final Act. 5).

We agree with the Examiner that claim 1 is directed to a certain method of organizing human activity in particular a fundamental economic practice. Claim 1 recites, “selecting based on a determination that a rendering of the user interface relating to the product ... has a *probability of increasing revenues* of the marketplace system,” and “conversion rate reflecting a number of renderings of the user interface in comparison to *a number of sales of specimens* of the product relating to the renderings, the *revenues* of the marketplace system *based on the sales* of the specimens of the product.” We find that determining probability of increasing revenues based on various market factors as noted above in italics is a fundamental economic practice because increasing revenues goes to profitability, which

is a bedrock of economics. The patent-ineligible end of the spectrum includes fundamental economic principles. *Alice*, 573 U.S. at 220.

Turning to the second prong of the “directed to” test, claim 1 only generically requires “a plurality of user interfaces” “a marketplace system,” “user system computer,” “database,” and “one or more processors of the marketplace system.” These components are described in the specification at a high level of generality. *See* Spec. ¶¶ 44–56, Figs. 1–3. We fail to see how the generic recitations of these most basic computer components and/or of a system so integrates the judicial exception as to “impose[] a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception.” Guidance at 53.

Thus, we find that the claims recite the judicial exception of a fundamental economic practice that is not integrated into a practical application.

That the claims do not preempt all forms of the abstraction or may be limited to user interface selection, does not make them any less abstract. *See OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015) (“And that 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.”).

Turning to the second step of the *Alice* analysis, because we find that the claims are directed to abstract ideas/judicial exceptions, the claims must include an “inventive concept” in order to be patent-eligible, i.e., there must be an element or combination of elements sufficient to ensure that the claim in practice amounts to significantly more than the abstract idea itself. *See*

*Alice*, 573 U.S. at 217–18 (quoting *Mayo Collaborative Servs.*, 566 U.S. at 72–73).

Concerning this step the Examiner found the following:

Under step 2B of the eligibility test, the claims recite additional elements (e.g. determination based on an identification that the element of the user interface relating to the product corresponds to the element of the user interface being presented on the user system computer; the selecting further based on a determination that renderings of other user interfaces relating to the product by the user system have other probabilities of increasing revenues of a marketplace system and a determination that the first probability is greater than each of the other probabilities, the determination of the probability based on a conversion rate of the user interface relating to the product, the conversion rate reflecting a number of renderings of the user interface in comparison to a number of sales of specimens of the product relating to the renderings). However, these limitations are not sufficient to amount to significantly more than the judicial exception itself. The claims do not purport to identify new computer hardware; rather, they merely assume the availability of existing hardware for input, memory, look-up, comparison, and output [see *SmartGene*].

Final Act. 6. We agree with the Examiner. “[T]he relevant question is whether the claims here do more than simply instruct the practitioner to implement the abstract idea . . . on a generic computer.” *Alice*, 573 U.S. at 225. They do not.

Taking the claim elements separately, the function performed by the computer at each step of the process is purely conventional. Using a computer to receive, select, apply decision criteria to data and generate a result, and transmit data amounts to electronic data query and transmission which are some of the most basic functions of a computer. All of these computer functions are well-understood, routine, conventional activities

previously known to the industry. *See Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016); *see also In re Katz Interactive Call Processing Patent Litig.*, 639 F.3d 1303, 1316 (Fed. Cir. 2011) (“Absent a possible narrower construction of the terms ‘processing,’ ‘receiving,’ and ‘storing,’ . . . those functions can be achieved by any general purpose computer without special programming”). In short, each step does no more than require a generic computer to perform generic computer functions.

Considered as an ordered combination, the computer components of Appellants’ claims add nothing that is not already present when the steps are considered separately. The sequence of data reception-analysis (receiving/selecting/transmitting/) and storing is equally generic and conventional or otherwise held to be abstract. *See Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014) (sequence of receiving, selecting, offering for exchange, display, allowing access, and receiving payment recited an abstraction), *Inventor Holdings, LLC v. Bed Bath & Beyond, Inc.*, 876 F.3d 1372, 1378 (Fed. Cir. 2017) (holding that sequence of data retrieval, analysis, modification, generation, display, and transmission was abstract), *Two-Way Media Ltd. v. Comcast Cable Commc’ns, LLC*, 874 F.3d 1329, 1339 (Fed. Cir. 2017) (holding sequence of processing, routing, controlling, and monitoring was abstract). The ordering of the steps is, therefore, ordinary and conventional.

Thus, the claims at issue amount to nothing significantly more than instructions to apply the abstract ideas of a fundamental economic practice and a commercial or legal interaction using some unspecified, generic computer. Under our precedents, that is not enough to transform an abstract

idea into a patent-eligible invention. *See Alice*, 573 U.S. at 225–26 (quoting *Mayo* 566 US at 79).

We have reviewed all the arguments Appellants have submitted concerning the patent eligibility of the claims before us that stand rejected under 35 U.S.C. § 101. (App. Br. 12–29). We find that our analysis above substantially covers the substance of all the arguments, which have been made. But, for purposes of completeness, we will address various arguments in order to make individual rebuttals of same.

Appellants argue:

The failure of the Examiner to establish a *prima facie* case that the claims at issue are directed to patent-ineligible subject matter is readily apparent.

...

First, at *Mayo* step one, the Examiner failed to properly identify the alleged abstract idea and explain how and why any such alleged abstract idea is similar to a concept that has been determined by the courts to be unpatentable.

App. Br. 20.

We disagree with Appellants. To the extent Appellants argue that the Examiner erred in adequately supporting this determination by not providing evidence, we are unpersuaded. In this regard, there is no requirement that Examiners must provide evidentiary support in every case before a conclusion can be made that a claim is directed to an abstract idea. *See, e.g.*, Manual of Patent Examining Procedure § 2106.07(a)(III) (2018) (“The courts consider the determination of whether a claim is eligible (which involves identifying whether an exception such as an abstract idea is being claimed) to be a question of law. Thus, the court does not require ‘evidence’ that a claimed concept is a judicial exception, and generally decides the legal

conclusion of eligibility without resolving any factual issues.” (Citations omitted.))

Moreover, the Federal Circuit made clear in *Berkheimer* that “not every § 101 determination contains genuine disputes over the underlying facts material to the § 101 inquiry.” *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1368 (Fed. Cir. 2018). In fact, the Federal Circuit in *Berkheimer* did not require evidentiary support for independent claim 1 because “[t]he limitations [of claim 1] amount to no more than performing the abstract idea of parsing and comparing data with conventional computer components.” *Id.* at 1370.

All that is required of the USPTO to meet its prima facie burden of production is that the Examiner set forth the statutory basis of the rejection and the reference or references relied upon in a sufficiently articulate and informative manner as to meet the notice requirement of 35 U.S.C. § 132. As the statute itself instructs, the Examiner must “notify the applicant,” “stating the reasons for such rejection,” “together with such information and references as may be useful in judging the propriety of continuing the prosecution of his application.” 35 U.S.C. § 132; *see also In re Jung*, 637 F.3d 1356, 1363 (Fed. Cir. 2011) (declining “to impose a heightened burden on examiners beyond the notice requirement of § 132”). Here, as we found above, the Examiner has made these findings as required by the statute. *See* Final Act. 2–4.

Specifically, in rejecting the pending claims under § 101, the Examiner notified Appellants that the “claims are directed to the abstract idea of providing information to users which are [sic] considered to be a method of organizing human activities and/or a fundamental economic

practice which are abstract ideas ineligible for patentability,” (Final Act. 5) and that “these limitations are not sufficient to amount to significantly more than the judicial exception itself.” (*Id.* at 6). Thus, we find that a prima facie case was established by the Examiner.

Appellants further argue:

With respect to the narrower of the Examiner’s two alleged abstract ideas, which includes a selected subset of the elements recited in the claims, the Examiner asserted that this alleged abstract idea is somehow similar to the “organizing human activity” at issue in *Alice*. However, the Supreme Court’s decision in *Alice* was based on a determination that the claims at issue in *Alice* were directed to “a fundamental economic practice long prevalent in our system of commerce;” it was not based on a determination that the claims at issue in *Alice* were directed to one of the certain methods of organizing human activity that was previously held to be unpatentable.

(Appeal Br. 21).

We do not find the argument persuasive. The Guidance explicitly groups “fundamental economic principles or practices (including hedging, insurance, mitigating risk)” as included in “(b) Certain methods of organizing human activity—.” Guidance 52.

Appellants further argue, “the Examiner did not provide any explanation as to ‘why the additional claim elements do not result in the claim as a whole amounting significantly more the judicial exception.’”

(Appeal Br. 22).

We disagree with Appellants.

At step two, we “consider the elements of each 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.” [*Alice Corp. Ltd. v CLS Bank Int’l*, 573 U.S. 217 (2014)] (quoting [*Mayo*

*Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 78–79 (2012)]. The second step of the *Alice* test is satisfied when the claim limitations “involve more than performance of ‘well-understood, routine, [and] conventional activities previously known to the industry.’” [*Content Extraction and Transmission LLC v. Wells Fargo Bank Nat’l Assoc.*, 776 F.3d, 1343 1347–48 (Fed. Cir. 2014)] (quoting *Alice*, 134 S. Ct. at 2359).

*Berkheimer*, 881 F.3d at 1367.

Notwithstanding that evidentiary support is not required for every *Alice* step two determination, the Examiner did provide sufficient evidentiary support for the *Alice* step two determination in this case. To this point, the Examiner found “[t]here is no indication that the combination of elements improves the functioning of a computer or improves any other technology. Their collective functions merely provide conventional computer implementation. None of the additional elements recited ”offers a meaningful limitation.” Final Act. 7.

Appellants argue, “like the claims in *Enfish*, the claims at issue in this case are directed to an improvement to a computer-related technology, specifically adding or modifying modules and databases associated with a networked system to provide a user with a customized online shopping experience while using a web browser (e.g., in real time).” App. Br. 24.

We disagree with Appellants that under the holding in *Enfish* our decision would be different (*see* Appeal Br. 24). *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016). We are unpersuaded by the Appellants’ argument that its claims are directed to an improvement in computer-related technology like that of claim 17 in *Enfish* and therefore are patent eligible. In *Enfish*, the invention at issue was directed at a new type

of logical model for a computer database: a self-referential table that allowed the computer to store many different types of data in a single table and index that data by column and row information. *Id.* at 1330–32. In finding the claims “not directed to an abstract idea,” but “to a specific improvement to the way computers operate,” the Federal Circuit noted that “the claims are not simply directed to *any* form of storing tabular data, but instead are specifically directed to a *self-referential* table for a computer database.” *Enfish*, 822 F.3d at 1336–37 (emphasis in original). We find nothing in the claims before us arising to this level of technical improvement. Claim 1 only generically requires “a plurality of user interfaces” “a marketplace system,” “user system computer,” “database,” and “one or more processors of the marketplace system.” These components are described in the specification at a high level of generality. *See* Spec. ¶¶ 44–56, Figs. 1–3. We find the claims are focused on “online marketing” and/or “customizing an online shopping experience” (Spec. ¶ 2) which relates to “economic or other tasks for which a computer is used in its ordinary capacity.” *Enfish*, 822 F.3d at 1336.

Likewise unpersuasive is Appellants’ argument that the claims before us are similar to those decided as patent eligible in *McRO, Inc. v. Bandai Namco Games Am., Inc.* 837 F.3d 1299 (Fed. Cir. 2016). (Appeal Br. 24–25). From *McRO*, we understand that the question is whether the claims as a whole “focus on a specific means or method that improves the relevant technology” or are “directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery.” *McRO, Inc.*, 837 F.3d at 1314. In this case, claim 1 as a whole is focused on satisfying certain contingencies for a probability of increasing revenues of the marketplace

system and not a particular way of programming or designing the software or a computer circuit.

Appellants also argue,

each of independent claims 1, 8, and 15 recites ‘one or more modules implemented by one or more processors’ that are configured to perform the recited operations. Furthermore, the specification describes the operations as being performed in response to ‘a request from an application (e.g., a web browser application) executing on a user system.’

(Appeal Br. 26).

We do not find this argument persuasive. A general purpose computer programmed to perform conventional functions does not amount to an inventive concept such that the claims are significantly more than the abstract idea. *See EON Corp. IP Holdings LLC v. AT&T Mobility LLC*, 785 F.3d 616, 623 (Fed. Cir. 2015). Appellants’ Specification does not support a computer system, which is employed to effect the claimed determination of a probability of increasing revenues of the marketplace system, as anything more than a generic computer. Claim 1 only generically requires “a plurality of user interfaces,” “a marketplace system,” “user system computer,” “database,” and “one or more processors of the marketplace system.” These components are described in the Specification at a high level of generality. *See Spec.* ¶¶ 44–56, Figs. 1–3. The recitation of a practical application for an abstract idea is not sufficient to transform the abstract idea into a patent-eligible invention. *See CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1371 (Fed. Cir. 2011) (“The Court [in *Parker v. Flook*, 437 U.S. 584 (1978)] rejected the notion that the recitation of a practical application for the calculation could alone make the invention patentable.”). A claim for

a new abstract idea is still an abstract idea. *See Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151. Also, “[a]n abstract idea can generally be described at different levels of abstraction.” *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1240–1241 (Fed. Cir. 2016).

Absent evidence to the contrary, we view the recited “an online shopping experience” to be only an indication of the environment in which the abstract idea is practiced.

MPEP 2106.05(h) concern[s] generally linking use of a judicial exception to a particular technological environment or field of use, including a discussion of the exemplars provided herein, which are based on *Bilski*, 561 U.S. at 612, and *Flook*, 437 U.S. at 588-90. Thus, the mere application of an abstract method of organizing human activity in a particular field is not sufficient to integrate the judicial exception into a practical application.

Guidance at 55 n.32, *see also Alice Corp.*, 573 U.S. at 223.

Appellants argue, “there are no § 102 or § 103 rejections remaining, which is further evidence that the claims at issue are directed to patentable subject matter.” (Appeal Br. 29).

We disagree with Appellants. Although the second step in the *Mayo/Alice* framework is termed a search for an “inventive concept,” the analysis is not an evaluation of novelty or non-obviousness, but rather, a search for “an element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.’” *Alice*, 573 U.S. at 217–218 (alteration in original). A novel and non-obvious claim directed to a purely abstract idea is, nonetheless, patent-ineligible. *See Mayo*, 566 U.S. at 90; *see also Diamond v. Diehr*, 450 U.S. at 188–89 (“The ‘novelty’ of any element or steps in a process, or even of the process itself, is of no relevance in

determining whether the subject matter of a claim falls within the § 101 categories of possibly patentable subject matter.”). The question in step two of the *Alice* framework is not whether an additional feature is novel but whether the implementation of the abstract idea involves “more than performance of ‘well-understood, routine, [and] conventional activities previously known to the industry.’” *Content Extraction and Transmission LLC v. Wells Fargo Bank, Nat’l Ass’n*, 776 F.3d 1343, 1347–48 (Fed. Cir. 2014) (quoting *Alice*, 573 U.S. at 225) (alteration in original).

For the reasons identified above, we are not persuaded of any deficiencies in the Examiner’s prima facie case of patent ineligibility of the rejected claims. Therefore, we will sustain the Examiner’s § 101 rejection of claims 1, 4–8, 11–15, 18, 19, and 21.

#### CONCLUSIONS OF LAW

We conclude the Examiner did not err in rejecting claims 1, 4–8, 11–15, 18, 19, and 21 under 35 U.S.C. § 101.

#### DECISION

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

AFFIRMED