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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* FARHANG KASSAEI

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Appeal 2017-008838<sup>1</sup>  
Application 12/416,051  
Technology Center 3600

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Before ANTON W. FETTING, MICHAEL C. ASTORINO, and  
MATTHEW S. MEYERS, *Administrative Patent Judges*.

MEYERS, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

Appellant filed a Request for Rehearing (“Request” or “Req. Reh’g”) pursuant to 37 C.F.R. § 41.52 on July 2, 2019, seeking reconsideration of our Decision on Appeal, mailed May 2, 2019 (“Decision” or “Dec.”), in which we affirmed the Examiner’s rejection of claims 1–5, 7–14, 16–18, 22, and 23 under 35 U.S.C. § 101 as directed to patent ineligible subject matter.

We have jurisdiction over the Request under 35 U.S.C. § 6(b).

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<sup>1</sup> Our decision references Appellant’s Appeal Brief (“Appeal Br.,” filed December 29, 2016), Reply Brief (“Reply Br.,” filed May 30, 2017), the Examiner’s Answer (“Ans.,” mailed March 29, 2017), and Final Office Action (“Final Act.,” mailed June 2, 2016). Appellant identify eBay, Inc., as the real party in interest. Appeal Br. 2.

## ANALYSIS

A Request for Rehearing “must state with particularity the points believed to have been misapprehended or overlooked by the Board.” 37 C.F.R. § 41.52(a)(1). A Request for Rehearing is not an opportunity to rehash arguments raised in the Briefs. Neither is it an opportunity to merely express disagreement with a decision without setting forth points believed to have been misapprehended or overlooked. Arguments not raised in the briefs before the Board and evidence not previously relied on in the briefs also are not permitted except in the limited circumstances set forth in § 41.52 (a)(2) through (a)(4). *Id.*

### *Core Wireless*

Appellant first argues that the present claims are not directed to an abstract idea because they are similar to the claims in the recent Federal Court decision in *Core Wireless Licensing S.A.R.L. v. LG Electronics, Inc.*, 880 F.3d 1356 (Fed. Cir. 2018). Req. Reh’g 1–3. More particularly, Appellant asserts that “[t]he user interface improvement recited in the claims at issue is analogous to the user interface improvement in *Core Wireless*” because the claimed user interface “saves a seller from having to search the Internet to discover an application that will best meet the seller’s needs, adding the application, and then using the application to update the seller’s listings.” *Id.* at 2 (Footnotes omitted). Appellant further asserts that the user interface recited in the present claims is similar to the user interface in *Core Wireless* because it “presents data (e.g., a recommendation of an application) that, based on an acceptance by the seller, launches the recommended application (e.g., for use in updating the seller’s listings).” *Id.* We do not agree.

The invention in *Core Wireless* concerned “an improved user interface for electronic devices, particularly those with small screens.” *Core Wireless*, 880 F.3d at 1363. The specification described that “prior art interfaces had many deficits relating to the efficient functioning of the computer, requiring a user ‘to scroll around and switch views many times to find the right data/functionality,’” and disclosed that the claimed invention improved the “efficiency of using the electronic device by bringing together ‘a limited list of common functions and commonly accessed stored data,’ which can be accessed directly from the main menu.” *Id.* The specification also disclosed that “[t]he speed of a user’s navigation through various views and windows” was improved because it “saves the user from navigating to the required application, opening it up, and then navigating within that application to enable the data of interest to be seen or a function of interest to be activated” — disclosure that the Federal Circuit concluded the language “clearly indicates that the claims are directed to an improvement in the functioning of computers, particularly those with small screens.” *Id.* (citation omitted).

Unlike the claims in *Core Wireless*, exemplary independent claim 10<sup>2</sup> of the present application merely recites a series of steps “implemented by one or more processors of the network-based marketplace system” for creating a user profile, identifying similar other user profiles by comparing

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<sup>2</sup> In the Decision, we selected independent claim 10 as the representative claim because Appellant argued claims 1–5, 7–14, 16–18, 22, and 23 as a group in their briefs. Dec. 3 (citing Appeal Br. 19–31; Reply Br. 1–8). In the Request, Appellant continues to argue claims 1–5, 7–14, 16–18, 22, and 23 as a group on the bases of independent claim 10 (*see* Req. Reh’g 1–14), and as such, independent claim 10 remains representative.

profiles, analyzing data within the profiles to calculate a performance impact value and rating, communicating a recommendation to the user based on the rating, and updating a listing of items for sale based on the recommendation. Appeal Br. 35–36 (Claims App’x). Here, as discussed in the Decision at pages 10–17, we find exemplary independent claim 10 merely recites a system with computer components that operate in their conventional manner to receive information, identify information, analyze information, and make a recommendation based on the information without any technological improvement to the computer components themselves.

Appellant points to the advantages related to “sav[ing] a seller from having to search the Internet” and “present[ing] data (e.g., a recommendation of an application) that, based on an acceptance by the seller, launches the recommended application (e.g., for use in updating the seller’s listings)” as evidence of an improved interface. Req. Reh’g 2 (citing Spec. ¶¶ 52, 53, 56). However, none of these purported advantages discussed in the Specification are tied to the language recited in exemplary independent claim 10, much less are indicative of an improvement to the functionality of known user interfaces.

In this regard, we note that independent claim 10 recites no more than “communicating a recommendation for presentation in a user interface,” and as a result, the claimed “user interface” does no more than present information for display. Thus, we maintain that

[t]he alleged advantages that Appellant identifies do not appear to concern an improvement to computer capabilities or provide details on the technological manner in which the steps are performed; but instead, relate to an alleged improvement in discovering applications that can “improve [a seller’s] ability to

sell items” through a process in which a computer is used as a tool in its ordinary capacity (*cf.* Spec. ¶ 3).

Dec. 12. We also note that the Court in *Trading Techs. Int’l, Inc. v. IBG LLC* addressed Appellant’s *Core Wireless* argument.

Relying principally on [*Core Wireless*], TT argues the claimed invention provides an improvement in the way a computer operates. We do not agree. The claims of the ’999 patent do not improve the functioning of the computer, make it operate more efficiently, or solve any technological problem. Instead, they recite a purportedly new arrangement of generic information that assists traders in processing information more quickly.

*Trading Techs. Int’l, Inc. v. IBG LLC*, 921 F.3d 1084, 1093 (Fed. Cir. 2019) (citations omitted). Similarly, the instant claims do not improve the functioning of the computer, make it operate more efficiently, or solve any technological problem. Instead, they recite a purportedly new arrangement of generic information that assists a seller’s “aware[ness] of applications that could improve their ability to sell items.” Spec. ¶ 3.

Accordingly, we are not persuaded that exemplary independent claim 10 recites an improved interface analogous to the interface in *Core Wireless*.

#### *Berkheimer Memo*

Appellant next asserts that the Board must reconsider its determination that the limitations of exemplary independent claim 10 are well-understood, routine, and conventional in light of the recent Federal Circuit decision in *Berkheimer v. HP, Inc.*, 890 F.3d 1369 (Fed. Cir. 2018). Req. Reh’g 4–7. Appellant argues that

the citations provided by the Examiner and the Board to Appellant’s as-filed [S]pecification do not constitute sufficient

evidence under *Berkheimer* that the additional elements recited in each of independent claims 1, [10], and [22], both individually and in combination, were well-understood, routine, and conventional to a skilled artisan at the time of Appellant's disclosure.

*Id.* at 3. Appellant asserts that the Decision improperly held "that virtually all of claim 10 maps to the alleged abstract idea of 'recommending items to users in a marketplace based on a comparison of metrics associated with other users,' as stated by the Examiner in the Answer." *Id.* at 6. And, according to Appellant

multiple elements of claim 10 go beyond this alleged abstract idea but were not analyzed by the Board as part of a search for an inventive concept. For example, the goal of generating a recommended item based on a comparison of metrics associated with other users does not require "creating an online marketplace sales profile for a seller," "calculating a plurality of metrics corresponding to . . . items . . . posted . . . by the seller," "identifying other sellers similar to the seller," "assessing a performance impact . . . on the plurality of metrics for the seller," or "automatically updating . . . listings based on an acceptance by the seller of the recommendation."

*Id.* More particularly, Appellant argues that "the cited portions of Appellant's [S]pecification do not include an express statement that the claimed operations or the computer functions used to perform the claimed operations were well-understood, routine, or conventional." *Id.* at 4. As best understood, Appellant asserts that the citations provided by the Examiner and the Board do not constitute sufficient evidence that (i) the claimed operations are well-understood, routine, or conventional and (ii) the claimed computer functions are well-understood, routine, or conventional. However, we are not persuaded by Appellant's argument that the Board relied on insufficient evidence in determining whether the claimed invention

includes limitations, which are not well-understood, routine, and conventional.

Initially, we note that Appellant’s argument is not persuasive, at least because it is clear from *Alice*, that under step two of the *Mayo/Alice* framework (i.e., step 2B), the elements of each claim are considered both individually and “as an ordered combination” to determine whether the additional elements, i.e., the elements other than the abstract idea itself, “transform the nature of the claim” into a patent-eligible application. *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 217 (2014); *see also Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 72–73 (2012)(Requiring that “a process that focuses upon the use of a natural law also contain *other* elements or a combination of elements, sometimes referred to as an ‘inventive concept,’ sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the natural law itself.”)(Emphasis added). Stated differently, the inventive concept under step two of the *Mayo/Alice* test cannot be the abstract idea itself:

It is clear from *Mayo* that the “inventive concept” cannot be the abstract idea itself, and *Berkheimer* . . . leave[s] untouched the numerous cases from this court which have held claims ineligible because the only alleged “inventive concept” is the abstract idea.

*Berkheimer*, 890 F.3d at 1374 (Moore, J., concurring); *see also BSG Tech LLC v. BuySeasons, Inc.*, 899 F.3d 1281, 1290–91 (Fed. Cir. 2018) (“Our precedent has consistently employed this same approach. If a claim’s only ‘inventive concept’ is the application of an abstract idea using conventional and well-understood techniques, the claim has not been transformed into a patent-eligible application of an abstract idea.”).

In addressing independent claim 10, the Examiner asserts that each claimed operation is an abstract claim element (*see, e.g.*, Final Act. 14), and Appellant does not dispute this characterization. As a result, the claimed operations of creating a user profile, identifying other similar profiles, assessing a performance impact, communicating a recommendation, and automatically updating a listing (*see* Dec. 8), are not additional elements to be considered under step two of the *Mayo/Alice* framework (i.e., step 2B). Accordingly, we are not persuaded by Appellant’s assertion that the cited portions of Appellant’s Specification do not include an express statement that the claimed operations perform well-understood, routine, and conventional functions because the claimed operations are abstract operations under Prong One of Revised Step 2A.

With respect to Appellant’s second argument, we note that the Office’s April 19, 2018 Memorandum to the Examining Corps from Deputy Commissioner for Patent Examination Policy, Robert W. Bahr, entitled, Changes in Examination Procedure Pertaining to Subject Matter Eligibility, Recent Subject Matter Eligibility Decision (*Berkheimer v. HP, Inc.*), expressly directs that an examiner may support the position that an additional element (or combination of elements) is not well-understood, routine or conventional with “[a] citation to an express statement in the specification . . . that demonstrates the well-understood, routine, conventional nature of the additional element(s).” *See Berkheimer* Memo 3. In particular, the *Berkheimer* Memo provides, among other things, the following guidance for formulating a rejection under Section 101:

A specification demonstrates the well-understood, routine, conventional nature of additional elements when it describes the additional elements . . .

- (1) as well-understood or routine or conventional (or an equivalent term);
- (2) as a commercially available product, or
- (3) in a manner that indicates that the additional elements are sufficiently well-known that the specification does not need to describe the particulars of such additional elements to satisfy 35 U.S.C. § 112(a).

*Id.* (paragraph reformatted and paragraph numbering added for emphasis).

Absent from Appellant's Request is any acknowledgment or mention of the second sentence of approach to number 1 of the *Berkheimer* Memo, namely, that a Section 101 rejection can be supported by finding that the specification demonstrates the well-understood, routine, conventional nature of additional elements by describing them

as well-understood or routine or conventional (or an equivalent term), as a commercially available product, or in a manner that indicates that the additional elements are sufficiently well-known that the specification does not need to describe the particulars of such additional elements to satisfy 35 U.S.C. § 112(a).

*Berkheimer* Memo 3; *see generally* Req. Reh'g 3–4.

Here, the Examiner cites paragraphs 66–67 of Appellant's Specification as indicating that the additional computing elements, taken either alone or in combination, do not result in anything more than a conventional computer implementation. Ans. 11–12. More particularly, paragraph 66 sets forth that

[t]he machine [for performing any one or more of the methodologies discussed in the application] may be a personal computer (PC), a tablet PC, a set-top box (STB), a Personal Digital Assistant (PDA), a cellular telephone, a web appliance, a network router, switch or bridge, or any machine capable of

executing instructions (sequential or otherwise) that specify actions to be taken by that machine.

Spec. ¶ 66. *See also* Ans. 11–12.

In light of the above, we are not persuaded by Appellant’s assertion that the citations provided by the Examiner and the Board do not constitute sufficient evidence that the computer functions are not well-understood, routine, and conventional under *Berkheimer*. Specifically, Appellant’s Specification indicates that the machine for performing the claimed methodologies may be “any machine capable of executing instructions (sequential or otherwise) that specify the actions to be taken by that machine” (*id.*), and such disclosure, without more, constitutes an express statement “in a manner that indicates that the additional elements are sufficiently well-known that the specification does not need to describe the particulars of such additional elements to satisfy 35 U.S.C. § 112(a).” *Berkheimer* Memo 3.

Further, the Decision provided detailed analysis, including citations to judicial decisions, in determining that the limitations of claim 10, considered individually and as an ordered combination, comprise generic and conventional functions that do not transform the claim into significantly more than the abstract idea. Decision 16–17.

We also are not persuaded by Appellant’s argument that the present claims are similar to those at issue in *Amdocs (Israel) Limited v. Openet Telecom, Inc.*, 841 F.3d 1288 (Fed. Cir. 2016). Req. Reh’g 6–7. In *Amdocs*, the Federal Circuit held the claim patent-eligible because it entailed an unconventional technological solution (enhancing data in a distributed fashion) to a technological problem (massive record flows which previously required massive databases). The solution required arguably generic

components, including network devices and “gatherers” which “gather” information. However, the court concluded that the claim’s enhancing limitation necessarily required that these generic components operate in an unconventional manner to achieve an improvement in computer functionality. *Amdocs*, 841 F.3d at 1300–01.

Appellant ostensibly maintains here that the present claims are analogous to those in *Amdocs* because the claims recite a particular process “for how the alleged abstract idea is accomplished and additional steps for how the alleged abstract idea is applied (e.g., ‘automatically updating at least a portion of the plurality of listings based on an acceptance by the seller of the recommendation.’).” Req. Reh’g 6. However, Appellant does not adequately explain how, and we fail to see how, the Federal Circuit’s ruling in *Amdocs* impacts the patent-eligibility of the present claims. For example, Appellant does not maintain that the present claims, like those in *Amdocs*, achieve any improvement in computer functionality or that the operations recited in the claims require that the claimed processor operate in an unconventional manner. Also, as described above, we find that the additional elements (or combination of elements), recited by independent claim 10, are well-understood, routine, and conventional. *See* Dec. 8–17.

#### *Dependent Claims*

Appellant asserts that “neither the Examiner nor the Board provided sufficient evidence under *Berkheimer* that the additional elements recited in the dependent claims were well-understood, routine, or conventional.” Req. Reh’g 9. More particularly, Appellant asserts that claims 2, 11, and 23 recite additional elements that “should have been considered by both the Examiner

and the Board in the search for an inventive concept at *Alice/Mayo* step two.” *Id.* at 8.<sup>3</sup> Appellant’s argument is not persuasive.

The difficulty with Appellant’s argument is that Appellant never argued the separate patent-eligibility of dependent claims 2, 11, and 23. Instead, Appellant simply stated that “the Examiner made further unsupported assertions that each of the *dependent* claims is also directed to unpatentable subject matter.” Appeal Br. 22; *see also* Reply Br. 4 (citing Appeal Br. 22)(“[T]he Examiner’s analysis was deficient with respect to the dependent claims as well as the independent claims.”). Even so, in the Final Action the Examiner stated that

[t]he dependent claims have the same deficiencies as their parent claims as being directed towards an abstract idea, and none of the claimed features of the dependent claims further limit the claimed invention in such a way as to direct the claimed invention to statutory subject matter.

Final Act. 15–16. And, in the Examiner’s Answer, the Examiner stated that the subject matter of dependent claim 11 “is merely a further recitation and repetition of the steps involved in performing the abstract idea of recommending items (i.e. applications) to users (i.e. sellers) in a marketplace based on a comparison of metrics associated with other users (i.e. sellers) by performing broadly recited mathematical calculations and comparisons.” Ans. 4–5.

#### *2019 Revised Guidance*

Appellant first alleges that “the Board’s reliance on the 2019 PEG constitutes an undesignated new ground of rejection to which App[ellant] is

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<sup>3</sup> We note that claims 2, 11, and 23 recite substantially similar subject matter.

entitled to respond and receive reconsideration by the Board.” Req. Reh’g 9.  
We cannot agree.

The 2019 Revised Guidance “applies to all applications, and to all patents resulting from applications, filed before, on, or after January 7, 2019,” which includes the present application. 2019 Revised Guidance, 84 Fed. Reg. at 50. The 2019 Revised Guidance, however, “does not constitute substantive rulemaking and does not have the force and effect of law.” *Id.* at 51. The guidance was developed as a tool for internal USPTO management; but, it “does not create any right or benefit, substantive or procedural, enforceable by any party against the USPTO”; and although USPTO personnel are “expected to follow the guidance,” failure to do so “is not, in itself, a proper basis for either an appeal or a petition.” *Id.* Accordingly, USPTO personnel are expected to follow the *Mayo/Alice* two-step framework.

The Decision sets forth that

[i]n rejecting the pending claims under 35 U.S.C. § 101, the Examiner analyzes the claims using the *Mayo/Alice* two-step framework (*see* Final Act. 10–18; *see also* Ans. 5–13). Here, the Examiner maintains the claims are directed to “recommending items to users in a marketplace based on a comparison of metrics associated with other users” (Ans. 2; *see also* Final Act. 11), which the Examiner considers to be an abstract idea, inasmuch as it may be characterized as being related to “certain methods of organizing human activity (e.g. advertising, marketing, and sales activities or behaviors)” (Final Act. 13). The Examiner further determines that the additional elements of the claims, taken alone and as an ordered combination, do not ensure that the claims amount to significantly more than the abstract idea (*see id.* at 15–16). The Examiner, thus, has clearly followed the two-part framework

specified by the Supreme Court in *Mayo/Alice* consistent with Office guidelines.

Dec. 6. The Decision similarly concludes that

independent claim 10 amounts to nothing significantly more than an instruction to apply the abstract idea of “recommending items to users in a marketplace based on a comparison of metrics associated with other users” (Final Act. 11; Ans. 2), which under our precedents, is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 134 S. Ct. at 2360.

Dec. 16–17. In light of the above, both the Examiner and the Decision follow the two-part framework specified by the Supreme Court in *Mayo/Alice* in concluding that the claims are directed to an abstract idea without significantly more. Accordingly, the Board’s reliance on the 2019 PEG does not constitute an undesignated new ground of rejection.

Regarding Prong One of Revised Step 2A, Appellant asserts that the alleged abstract idea identified by the Board “does not relate to any of the cases cited in the 2019 PEG as providing a basis for the enumerated grouping of ‘certain methods of organizing human activity,’ including those related to ‘advertising’ or ‘marketing’.” Req. Reh’g 9–10. We cannot agree.

In applying Step 2A, Prong One of the Guidance, the Decision states that “the Examiner’s characterization of claim 10 is, in our view, fully consistent with the Specification, including the claim language.” Dec. 7.

More particularly, the Decision sets forth that

when viewed through the lens of the 2019 Revised Guidance, the Examiner’s analysis depicts the claimed subject matter as one of the ineligible “certain methods of organizing human activity” including at least advertising and marketing (Final Act. 13), and as such, an abstract idea under Prong One of

Revised Step 2A. *See* 2019 Revised Guidance, 84 Fed. Reg. at 52.

Dec. 9.

Accordingly, the Board properly considered and determined that claim 10 falls within one of the enumerated sub-groupings of “certain methods of organizing human activity,” namely “commercial or legal interactions,” which the 2019 Revised Guidance explicitly describes as “including . . . advertising, marketing or sales activities.” *See* 2019 Revised Guidance, 84 Fed. Reg. at 52.

Regarding Prong Two of Revised Step 2A, Appellant first asserts that “as in *Core Wireless*, the claims at issue in this case are, in fact, integrated into a practical application and include an improvement to the functioning of a computer.” Req. Reh’g 10. Initially, we note that Applicant’s arguments with respect to *Core Wireless* and Prong Two of Revised Step 2A are addressed above. As a result, we are not persuaded that the additional elements, when considered in view of *Core Wireless*, integrate the abstract idea into a practical application for the same reasons as stated above.

Appellant further asserts that, under *Cellspin Soft, Inc. v. Fitbit, Inc.*, 927 F.3d 1306 (Fed. Cir. 2019), “it was improper for the Board to discount ‘attorney argument’ to the extent it set forth a plausible and specific allegation of inventiveness.” Req. Reh’g 11. We do not agree. Initially, we note that Appellant’s reliance on *Cellspin* is misplaced. Specifically, the *Cellspin* decision is limited to addressing evidentiary standards with respect to an omnibus motion to dismiss under Federal Rule of Civil Procedure 12(b)(6).

The Court in *Cellspin* set forth that

[w]hile we do not read *Aatrix* to say that any allegation about inventiveness, wholly divorced from the claims or the specification, defeats a motion to dismiss, plausible and specific factual allegations that aspects of the claims are inventive are sufficient. As long as what makes the claims inventive is recited by the claims, the specification need not expressly list all the reasons why this claimed structure is unconventional.

*Cellspin*, 927 F.3d at 1317. Although the Court in *Cellspin* held that the district court erred by not accepting well-pleaded allegations as true, such allegations, under *Cellspin*, constitute evidence specifically with respect to an omnibus motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). However, even if *Cellspin* were not factually limited to an omnibus motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), Appellant's previous arguments were not wholly discounted. Instead, Appellant's remarks were considered in view of the record, as a whole. Accordingly, we are not persuaded by Appellant's assertion.

Appellant next asserts that, in view of the 2019 PEG, "automatically updating at least a portion of the plurality of listings based on an acceptance by the seller of the recommendation" is a sufficient practical application. Req. Reh'g 11. More particularly, Appellant argues that the claims "are integrated into a practical application that includes a specific manner of invoking functionality of recommended applications, which results in an improvement over prior art systems (e.g., reducing the burden on both sellers and application writers)." *Id.* We do not agree.

The Examiner identifies the step of "automatically updating at least a portion of the plurality of listings based on an acceptance by the seller of the recommendation" as an abstract claim element (*see* Final Act. 14), and

Appellant does not dispute this characterization. As a result, the claimed operations associated with “automatically updating” are not additional elements to be considered under Prong Two of Revised Step 2A and cannot integrate the abstract idea into a practical application.

Even if the claimed limitation were considered under Prong Two of Revised Step 2A, Appellant does not allege an improvement in technology or any other meaningful limitation. Instead, Appellant asserts that the claimed improvement reduces the burden on both sellers and application writers. Req. Reh’g 11. However, we find the improvement identified by Appellant is simply “an improvement in a business practice for which generic computer components are used in their ordinary capacity” rather than a technological improvement. Dec. 14. Accordingly, we are not persuaded by Appellant’s assertion.

Regarding Step 2B, Appellant reasserts that the claims “recite more than performance of well-understood, routine, and conventional activities, as discussed above, and there has not been sufficient evidence provided to the contrary.” Req. Reh’g 12. We note that Appellant’s arguments with respect to *Berkheimer* and Step 2B are addressed above. As a result, we are not persuaded that the additional elements amount to significantly more than the abstract idea for the same reasons as stated above.

#### *De Novo Review*

Appellant last argues that the Board misapprehended the law by affording “deference to the Examiner with respect to the Examiner’s subject matter eligibility determination.” Req. Reh’g 12–13. However, in making our determination, we considered the findings of fact and conclusions made by the Examiner and, if not made clear in our Decision, adopted as our own,

the Examiner’s findings of facts and conclusions as set forth in the Answer and Final Action from which this appeal was taken. And, after considering the evidence provided by the Examiner in light of Appellant’s arguments, we found a preponderance of the evidence supported the Examiner’s findings that the claims are directed to an abstract idea without including additional elements amounting to significantly more than the abstract idea, and agreed with the Examiner’s ultimate conclusion of patent ineligibility with regard to claim 10 and the remaining claims.

For the forgoing reasons, we conclude that Appellant has failed to show that the Board misapprehended or overlooked points raised in the appeal or that the Decision to affirm the Examiner was erroneous.

**CONCLUSION**

Outcome of Decision on Rehearing:

| <b>Claims Rejected</b>   | <b>35 U.S.C. §</b> | <b>Reference(s)/Basis</b> | <b>Denied</b>            | <b>Granted</b> |
|--------------------------|--------------------|---------------------------|--------------------------|----------------|
| 1–5, 7–14, 16–18, 22, 23 | 101                | Eligibility               | 1–5, 7–14, 16–18, 22, 23 |                |

Final Outcome of Appeal After Rehearing:

| <b>Claims Rejected</b>   | <b>35 U.S.C. §</b> | <b>Reference(s)/Basis</b> | <b>Affirmed</b>          | <b>Reversed</b> |
|--------------------------|--------------------|---------------------------|--------------------------|-----------------|
| 1–5, 7–14, 16–18, 22, 23 | 101                | Eligibility               | 1–5, 7–14, 16–18, 22, 23 |                 |
| <b>Overall Outcome</b>   |                    |                           | 1–5, 7–14, 16–18, 22, 23 |                 |

Appeal 2017-008838  
Application 12/416,051

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).

DENIED