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EXAMINER
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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* THOMPSON B. PATTERSON JR.<sup>1</sup>

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Appeal 2017-009198  
Application 12/945,946  
Technology Center 3700

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Before: JOHN C. KERINS, STEFAN STAICOVICI, and LEE L. STEPINA,  
*Administrative Patent Judges.*

STEPINA, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Thompson B. Patterson Jr. (“Appellant”) appeals under 35 U.S.C. § 134(a) from the Examiner’s decision rejecting claims 22, 25–34, 50, and 51. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> According to Appellant’s Appeal Brief (hereinafter “Appeal Br.”) the real parties in interest are Thompson B. Patterson Jr. and eMARKER, LLC. Appeal Br. 4.

## THE CLAIMED SUBJECT MATTER

The claimed invention is directed to methods of electronically handling a casino marker. Spec. ¶ 2. Claims 22 and 50, reproduced below, are illustrative of the claimed subject matter:

22. A method of redeeming a marker issued by a gaming establishment to a patron comprising:

(a) receiving first identifying information about the patron that essentially uniquely identifies the patron and distinguishes the patron from other patrons;

(b) electronically storing said first identifying information in an electronic database;

(c) electronically storing marker information about the patron in said electronic database, said marker information comprising a time when markers were issued to the patron and an amount of the markers;

(d) after steps (a) – (c) receiving a request from the patron to redeem said marker;

(e) after steps (a) – (d), at least partially electronically obtaining and storing second identifying information from the patron;

(f) after steps (a) – (e), at least partially electronically comparing said stored first identifying information with said second identifying information obtained in step (e);

(g) determining whether to redeem said marker based on said comparison;

(h) electronically displaying said stored marker information;

(i) if a determination has been made to redeem said marker in step (g), obtaining something of value from the patron; and

(j) electronically storing a time when said something of value was obtained from the patron and a value of said something of value.

50. A method of processing a marker request by a patron of a table game played by utilizing chips at a gaming establishment having a group of hired personnel members at least one of whom

oversees an operation of said table game, said method comprising:

(a) receiving by a first member of said group first identifying information about the patron that essentially uniquely identifies the patron and distinguishes the patron from other patrons;

(b) electronically storing said first identifying information in an electronic database;

(c) electronically storing financial information about the patron in said electronic database, said financial information selected from the group consisting of credit available to the patron and funds the patron has on deposit with the gaming establishment;

(d) after steps (a) – (c), receiving by a second member of said group who oversees the operation of the table game said marker request orally from the patron;

(e) step for approving the marker request including assessing a location where the patron is making the marker request; and

(f) if the marker request has been approved in step (e), then, in response to the approval, distributing to the patron for the patron's use chips that will enable the patron to play the table game.

#### THE REJECTION ON APPEAL

Claims 22, 25–34, 50, and 51 are rejected under 35 U.S.C. § 101 as being directed to patent ineligible subject matter.

#### OPINION

##### *Procedural History*

This is the second appeal in the present application. We previously issued a decision in the present application (Appeal 2014-004786, mailed May 31, 2016, hereinafter “the Decision”). In the Decision, claims 22–47 were appealed, and the Examiner’s decision to reject claims 22, 25–34, 37,

and 39 was reversed and the Examiner's decision to reject claims 23, 24, 35, 36, 38, and 40–47 was affirmed.

Appellant filed an amendment on June 17, 2016, with previously presented claims 22, 25–34, and new claims 48 and 49 (which were previous claims 37 and 39) rewritten in independent form to include the limitations presented in previous independent claim 35. Because claims having the numbers 48 and 49 had previously been presented and canceled, it was improper for new claims to have these numbers. Thus, the Examiner renumbered new claims 48 and 49 as claims 50 and 51. *See* Non-Final Act. 2 (mailed Aug. 10, 2016). The Examiner also issued a rejection of claims 22, 25–34, 50, and 51 under 35 U.S.C. § 101. *See id.* at 3.

Appellant filed a response on August 17, 2016, asserting that the Examiner did not obtain proper permission to reopen prosecution. In response, the Examiner issued a second Non-Final Action on September 14, 2016, noting that the signature of the Technology Center Director authorizing reopening of prosecution was inadvertently omitted. Appellant again submitted a response arguing that prosecution was improperly reopened. *See* Response to Office Action submitted Aug. 20, 2016. The Examiner then issued a Final Office Action on October 7, 2016, from which the present appeal is taken.

In the present Appeal, Appellant initially argues that the Examiner improperly reopened prosecution without proper authority and without sufficient cause. *See* Appeal Br. 10–17; *see also* Reply Br. 2–4. We note that the decision to reopen prosecution is a petitionable matter, not an appealable matter, and is not within the jurisdiction of the Board. *See*

MANUAL OF PATENT EXAMINING PROCEDURE (MPEP)

§§ 1002.02(c)(1) and 1201.

Turning to the rejection, under the *Mayo/Alice* two-part analysis for patent subject matter eligibility, the Examiner finds that the claims are directed to an abstract idea that may be classified as “fundamental economic practices.” *See* Final Act. 2–7; *see also* the two-step test set forth in *Alice Corp. Party, Ltd. v. CLS Bank International*, 134 S. Ct. 2347, 2350 (2014) and *Mayo Collaborative Servs. v. Prometheus Labs, Inc.*, 566 U.S. 66, 88 (2012). For step 2B of the *Mayo/Alice* analysis, the Examiner concludes that the claims are directed to “no more than obtaining information, comparing the information, and identifying options,” and do not recite “a specific limitation other than what is well-understood, routine and conventional in the field.” Final Act. 10–12.

Appellant does not contest that the claims are directed to an abstract idea. *See* Appeal Br. *passim*. The central issue in this case is whether the claims contain an “inventive concept” to “transform” the claimed abstract idea into patent-eligible subject matter. *Alice*, 134 S. Ct. at 2357 (quoting *Mayo*, 566 U.S. at 72, 80). As the Examiner notes, this determination requires a finding that the claim includes “additional features” that amount to “significantly more” than “well-understood, routine, conventional activity.” *See* Final Act. 10–11; *see also Mayo*, 566 U.S. at 77–80.

Appellant argues that the Patent Trial and Appeal Board (hereinafter “PTAB”), in the Decision, “concluded that the pending claims recite features that are not just different from, but are both novel and non-obvious, in view of the prior art,” and that therefore, the claims include limitations that are not “well-known, routine, or conventional in the field.” Appeal Br. 18–19.

Appellant’s argument that the Decision settles this issue is misplaced because that decision addresses only the rejection on appeal, not novelty and non-obviousness per se, and not whether the claims recite an inventive concept in the context of a patent eligibility analysis. Even a novel and non-obvious claim directed to a purely abstract idea may be, nonetheless, patent-ineligible. *See Mayo*, 566 U.S. at 90; *see also Diamond v. Diehr*, 450 U.S. 175, 188–89 (1981) (“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.”).

Thus, we must consider whether the pending claims recite features that are other than well-known, routine, or conventional. “Whether something is well-understood, routine, and conventional to a skilled artisan at the time of the patent is a factual determination.” *Berkheimer v. HP Inc.*, 881 F. 3d 1360, 1369 (Fed. Cir. 2018).

*Claims 22, 25–34, and 51*

Each of independent claims 22, 25, and 51 recites, in part, “after steps (a) – (d), at least partially electronically obtaining and storing second identifying information about the patron.”

Viewing this claim element separately, the step of obtaining and storing second identifying information is purely conventional. The prior art cited by the Examiner in the rejection addressed in the Decision, namely, Greenlees (E. Malcom Greenlees, *Casino Accounting and Financial Management*, University of Nevada Press (1988)) and Huizinga (US2007/0243935 A1, pub. Oct. 18, 2007) both disclose patron

identification as a basic procedure. Specifically, Greenlees discloses that “[t]he basic procedure is to have the customer fill out a credit application and bank reference form.” Greenlees, 239. Greenlees also discloses that the pit boss checks the marker to assure that “[t]he signature matches the credit application of the customer. This is accomplished in some casinos by showing the marker on a TV camera connected to the main credit cashier where the signature is compared to other credit records.” *Id.* at 266.

Huizinga discloses, in a similar electronic verification procedure, that “a photograph of the authorized or registered smartcard user may be displayed by a wireless communications device 44 used by a casino employee ... [which] may be enhanced with the use of biometric data ... include[ing] iris scan, finger or thumbprints, voice samples, or other biometric measures.” Huizinga ¶ 74. Huizinga’s wireless communications device 44 also allows the employee to coordinate the customer identification with the buy back or redemption of a marker. *Id.* ¶¶ 106, 107, 116, and 117 (“the user may enter a marker request amount or buy back amount. This may facilitate the issuing and buy back of markers.”). Thus, obtaining a signature and storing it and later comparing it to verify identity, as taught by Greenlees, and the more recent development of electronically obtaining unique identifying information for comparison and verification, as taught by Huizinga as part of a marker redemption process, are well-understood, routine, conventional activities previously known to the industry.

Considered as an ordered combination, Appellant’s method steps add nothing significantly more than when the steps are considered separately. The sequence of data reception (obtain identifying information)-analysis (comparing)-access (whether to redeem) 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) (sequence of data retrieval, analysis, modification, generation, display, and transmission); *Two-Way Media Ltd. v. Comcast Cable Communications, LLC*, 874 F.3d 1329, 1339 (Fed. Cir. 2017) (sequence of processing, routing, controlling, and monitoring). The recited order of the steps is, therefore, ordinary and conventional. We conclude that the limitations of the claims do not transform the abstract idea that they recite into patent-eligible subject matter because the claims simply instruct the practitioner to implement the abstract idea with routine, conventional activity.

Under governing precedent, these claims do not contain enough to transform an abstract idea into a patent-eligible invention. *See Alice Corp. Pty. Ltd.*, 134 S. Ct. at 2360.

*Claim 50*

Claim 50 recites, in part, “(e) step for approving the marker request including assessing a location where the patron is making the marker request.”

The Federal Circuit has treated collecting information, including when limited to particular content (which does not change its character as information), as within the realm of abstract ideas. *See, e.g., Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1349 (Fed. Cir. 2015); *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015); *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat’l Ass’n*,

776 F.3d 1343, 1347 (Fed. Cir. 2014); *Digitech Image Techs., LLC v. Elecs. for Imaging, Inc.*, 758 F.3d 1344, 1351 (Fed. Cir. 2014); *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1370 (Fed. Cir. 2011); *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016).

Here, claim 50 is focused on a process of gathering and analyzing information of a specified content (based on location), and not any particular assertedly inventive technology for performing those functions. It is therefore directed to an abstract idea. Specifically, “merely selecting information, by content or source, for collection, analysis, and display does nothing significant to differentiate a process from ordinary mental processes, whose implicit exclusion from § 101 undergirds the information-based category of abstract ideas.” *Elec. Power Grp.*, 830 F.3d at 1355.

Nor does claim 50 require any nonconventional computer, network, or display components, or even a “non-conventional and non-generic arrangement of known, conventional pieces,” but merely calls for performance of the claimed information collection, analysis, and display functions “on a set of generic computer components” and display devices. *Bascom Global Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1349–52, (Fed. Cir. 2016). The Specification discloses obtaining “a signature, or digital signature capture, preferably on a touch pad,” or obtaining “biometric data include retinal scans, infrared facial readings, feature spacing, fingerprint scans, and the like.” Spec. ¶ 31. The data is “digitally stored on the gaming establishment’s internal computer network, or associated service model as software as a service active server pages (ASP), and associated with the instant marker request.” Spec. ¶ 32. Nothing in the claims, understood in light of the Specification, requires anything

other than off-the-shelf, conventional computer, network, and biometric data technology for gathering and presenting the desired information. The Federal Circuit has repeatedly held that such invocations of computers and networks that are not even arguably inventive are “insufficient to pass the test of an inventive concept in the application” of an abstract idea. *Elec. Power Grp.*, 830 F.3d at 1355.

Additionally, we conclude that claim 50 is analogous to the method claims considered by the court in *Content Extraction*, which looked to whether the claims involved “more than performance of ‘well-understood, routine, [and] conventional activities previously known to the industry.’” *Content Extraction*, 776 F.3d at 1347–48 (quoting *Alice*, 134 S.Ct. at 2359). The court held that they did not. Rather, it noted, the claims merely recited the use of existing scanning and processing technology to recognize and store data from specific data fields. *Id.* at 1348. Because it concluded that “the basic character of [the plaintiff’s] claims is the abstract idea of extracting and storing data from hard copy documents using generic scanning and processing technology,” the court held the claims patent-ineligible. *Id.* at 1349. Here, Appellant is obtaining and storing data using conventional technology and assessing the data based on known data fields (*see* Huizinga ¶¶ 92–97; Fig. 11B, i.e., location fields 242, 244, 246, player identification fields 248, 250, and time fields 252, 254). Thus, although we appreciate Appellant’s argument that the type of data being assessed is not disclosed by Huizinga and Greelees, the claims are still directed to assessing data to verify whether a user should be granted a marker, which is disclosed by Huizinga, and thus do not add “significantly more” to transform an abstract idea into a patent-eligible invention. *See* Huizinga, ¶¶ 74 and 205.

On pages 19–23 of the Appeal Brief, Appellant presents additional arguments disparaging the Supreme Court’s decisions in *Bilski v. Kappos*, 561 U.S. 593 (2010), *Mayo*, and *Alice* and urging us to refuse to follow these decisions. See Appeal Br. 19 (“Applicant urges the PTAB to disregard any *stare decisis* effect of [*Alice*] based on the doctrine of anticipatory overruling of that decision either by the Supreme Court itself or via statutory amendment.”), *id.* at 23 (“Applicant hopes the PTAB will have the courage and fort[h]rightness to refuse to follow the stupid and unworkable *Bilski*, *Mayo*, and *Alice* line of decisions, as is permitted under the anticipatory overruling doctrine.”). However, we are constrained to follow that precedent unless and until the *Bilski/Mayo/Alice* line of decisions is overruled.

Having considered all of Appellant’s arguments, we are not apprised of error in the Examiner’s determination that the claims do not recite an element or combination of elements that is sufficient to ensure that the patent in practice amounts to significantly more than a claim upon the abstract idea. Accordingly, we sustain the Examiner’s rejection of claims 22, 25–34, 50, and 51 as being directed to patent-ineligible subject matter.

#### DECISION

The Examiner’s rejection of claims 22, 25–34, 50, and 51 is affirmed.  
No time period for taking any subsequent action in connection with

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this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37  
C.F.R. § 1.136(a)(1)(iv).

AFFIRMED