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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RICHARD JUST

Appeal 2017-009559¹
Application 14/132,995²
Technology Center 3600

Before BRUCE T. WIEDER, TARA L. HUTCHINGS, and
ROBERT J. SILVERMAN, *Administrative Patent Judges*.

HUTCHINGS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner’s final rejection of claims 1, 4–11, 14–17, 20, and 22–25. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ Our decision references Appellant’s Appeal Brief (“App. Br.,” filed Jan. 5, 2017) and Reply Br. (“Reply Br.,” filed July 5, 2017), and the Examiner’s Answer (“Ans.,” mailed May 5, 2017) and Final Office Action (“Final Act.,” mailed July 6, 2016).

² Appellant identifies Capital One Financial Corporation as the real party in interest. App. Br. 5.

CLAIMED INVENTION

Appellant's claimed invention general relates to "using financial transaction data and, more particularly, to determining consumer shopping corridors based on financial transaction data." Spec. ¶ 2.

Claims 1, 11, and 17 are the independent claims on appeal. Claim 1, reproduced below with bracketed notations added, is illustrative of the claimed subject matter:

1. A system for generating a consumer shopping corridor comprising:
 - [(a)] one or more processors; and
 - [(b)] one or more memory devices storing instructions that, when executed by the one or more processors, performs the operations of:
 - [(c)] periodically receiving financial transaction information from at least one client device, the financial transaction information including:
 - a plurality of financial transactions performed using a financial service account associated with a customer, and
 - location information corresponding to the plurality of financial transactions and indicating a geographic location of the customer for each of the plurality of financial transactions when each of the plurality of financial transactions occurred;
 - [(d)] grouping the financial transactions into a plurality of clusters based on the geographic locations by determining a geographic area that includes a number of financial transactions exceeding a threshold number of financial transactions;
 - [(e)] generating a shopping corridor associated with the customer and the periodically received financial transaction information based on at least the plurality of clusters, including:
 - [(f)] determining, based at least on time and date information corresponding to the plurality of

financial transactions, a pathway connecting the plurality of clusters; and
[(g)] generating a map of the pathway; and
[(h)] providing a financial service using the map.

App. Br. 47–48 (Claims Appendix).

REJECTION³

Claims 1, 4–11, 14–17, 20, and 22–25 are rejected under 35 U.S.C. § 101 as judicially excepted from statutory subject matter.

ANALYSIS

Appellant argues independent claims 1, 11, and 17 together. App. Br. 5–20. We select claim 1 as representative. Claims 11 and 17 stand or fall with claim 1. *See* 37 C.F.R. §41.37(c)(1)(iv).

Under 35 U.S.C. § 101, an invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. The Supreme Court, however, has long interpreted § 101 to include an implicit exception: “[L]aws of nature, natural phenomena, and abstract ideas” are not patentable. *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014).

The Supreme Court, in *Alice*, reiterated the two-step framework previously set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012), “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice Corp.*, 573 U.S. at 217.

³ The Examiner has withdrawn the rejection of claims 1, 11, 17, and 24 under 35 U.S.C. § 112(a). Ans. 2.

The first step in that analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts.” *Id.* If the claims are not directed to a patent-ineligible concept, e.g., an abstract idea, the inquiry ends. Otherwise, the inquiry proceeds to the second step where the elements of the claims are considered “individually and ‘as an ordered combination’” to determine whether there are additional elements that “‘transform the nature of the claim’ into a patent-eligible application.” *Id.* (quoting *Mayo*, 566 U.S. at 79, 78). This is “a search for an ‘inventive concept’ — *i.e.*, 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.’” *Id.* at 217–18 (alteration in original).

The Court acknowledged in *Mayo*, that “all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.” *Mayo*, 566 U.S. at 71. Therefore, the Federal Circuit has instructed that claims are to be considered in their entirety to determine “whether their character as a whole is directed to excluded subject matter.” *McRO, Inc. v. Bandai Namco Games Am., Inc.*, 837 F.3d 1299, 1312 (Fed. Cir. 2016) (quoting *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015)).

The U.S. Patent and Trademark Office (the “USPTO”) published revised guidance on January 7, 2019 for use by USPTO personnel in evaluating subject matter eligibility under 35 U.S.C. § 101. That guidance “extracts and synthesizes key concepts identified by the courts as abstract ideas to explain that the abstract idea exception includes” the following three groupings: (1) mathematical concepts; (2) certain methods of organizing human activity, e.g., fundamental economic principles or practices,

commercial or legal interactions; and (3) mental processes. 2019 REVISED PATENT SUBJECT MATTER ELIGIBILITY GUIDANCE, 84 Fed. Reg. 50, 52 (Jan. 7, 2019) (the “2019 Revised Guidance”).⁴

Under the 2019 Revised Guidance, in determining whether a claim is patent-eligible, we first look to whether the claim recites a judicial exception, including one of the enumerated groupings of abstract ideas (“Step 2A, Prong One”). *Id.* at 54. If so, we next consider whether the claim includes additional elements, beyond the judicial exception, “that integrate the [judicial] exception into a practical application,” i.e., apply, rely on, or use 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. (“Step 2A, Prong Two”). *Id.* at 54–55.

Only if the 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 “[a]dds a specific limitation or combination of limitations” that is not “well-understood, routine, conventional activity in the field” or simply “appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception” (“Step 2B”). *Id.* at 56.

With the legal principles outlined above, and the 2019 Revised Guidance in mind, we turn to the Examiner’s § 101 rejection. In rejecting the pending claims under 35 U.S.C. § 101, the Examiner notified Appellant

⁴ The Revised Guidance, by its terms, applies to all applications, and to all patents resulting from applications, filed before, on, or after January 7, 2019. 84 Fed. Reg. 50.

that the claims are directed to “generat[ing] a shopping corridor by receiving data, grouping transaction data into clusters, identifying a central location for each cluster, generating a corridor, determining a pathway, generating a map and providing a service,” which the Examiner concluded is similar to other concepts that the courts have held abstract, such as a mathematical relationship. Final Act. 11–12. The Examiner also determined that the claims do not include additional elements or a combination of elements sufficient to amount to significantly more than the abstract idea itself. *Id.* at 12–13. Specifically, the Examiner determined that the additional elements are generically-recited computer elements (e.g., processor, memory device), that supply and store data, and execute instructions, which are well-understood, routine, and conventional activities. *Id.*

The Examiner, in our view, set forth the statutory basis of the rejection in a sufficiently articulate and informative manner as to meet the notice requirement of 35 U.S.C. § 132. And we find that, in doing so, the Examiner established a prima facie case of patent-ineligibility. *See In re Jung*, 637 F.3d 1356, 1362 (Fed. Cir. 2011) (holding that the USPTO carries its procedural burden of establishing a prima facie case when its rejection satisfies the notice requirements of 35 U.S.C. § 132 by notifying the applicant of the reasons for the rejection, “together with such information and references as may be useful in judging the propriety of continuing [] prosecution”). Appellant’s arguments to the contrary are unpersuasive. *See App. Br.* 13–14, 23–25, 35–39; *see also Reply Br.* 6–13, 17–18.

Step One of the Mayo/Alice Framework

We are not persuaded here by Appellant’s arguments that the Examiner erred in determining that claim 1 directed to an abstract idea.

App. Br. 11–33; *see also* Reply Br. 7–17, 19–23. 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.*, 790 F.3d at 1346). Here, the Specification, including the claim language, makes clear that the claims focus on an abstract idea, and not on any improvement to computer technology and/or functionality. The Specification is entitled “SYSTEMS AND METHODS FOR DETERMINING CONSUMER SHOPPING CORRIDORS.” The Specification describes, in the Background section, that “[c]urrent technology provides financial service providers with an abundance of information associated with transactions made by their customers.” Spec. ¶ 3. The customer’s financial service provider typically receives transaction data describing the transaction each time the customer conducts a transaction, such as a purchase at a retail merchant. *Id.* The transaction data is compiled and provided to the customer through bank statements and transaction histories. *Id.* However, storing and providing access to the customer and/or financial service provider “remains tedious and inefficient.” *Id.* ¶ 4. “[A] need exists for transaction data to be processed in a way that allows customers and financial service providers to view and use transaction data in a more convenient manner.” *Id.* The invention, according to Appellant’s Specification “determine[s] where and when a customer makes regular purchases from one or more merchant or otherwise performs financial transactions using one or more financial service accounts provided by a financial service provider.” *Id.* ¶ 18. In particular, a shopping corridor

(or virtual map) organizes the customer's financial transactions based on a location and time associated with each transaction. *Id.* ¶ 33. This organization enables the shopping corridor to indicate the geographic locations in which a customer has made transactions and the pathways taken by the customer that connect the geographic locations. *Id.* ¶ 44. The geographic locations and pathways both indicate locations where future transactions may be made. *Id.* The financial service provider uses the shopping corridor to generate targeted advertisements or to prevent fraud. *Id.*

Consistent with this disclosure, claim 1 recites a system for generating a consumer shopping corridor that performs the operations comprising:

[(c)] periodically receiving financial transaction information . . . , the financial transaction information including:

a plurality of financial transactions performed using a financial service account associated with a customer, and

location information corresponding to the plurality of financial transactions and indicating a geographic location of the customer for each of the plurality of financial transactions when each of the plurality of financial transactions occurred;

[(d)] grouping the financial transactions into a plurality of clusters based on the geographic locations by determining a geographic area that includes a number of financial transactions exceeding a threshold number of financial transactions;

[(e)] generating a shopping corridor associated with the customer and the periodically received financial transaction information based on at least the plurality of clusters, including:

[(f)] determining, based at least on time and date information corresponding to the plurality of

financial transactions, a pathway connecting the plurality of clusters; and
[(g)] generating a map of the pathway; and
[(h)] providing a financial service using the map.

These limitations, when given their broadest reasonable interpretation, recite collecting and processing data for use in providing a financial service, i.e., a commercial interaction, which is a certain method of organizing human activity, and, therefore, an abstract idea. *See* 2019 Revised Guidance 52.

The Federal Circuit has held similar concepts, such as tailoring information presented to a user and targeting advertisements to certain customers, to be abstract. *See, e.g., Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1370 (Fed. Cir. 2015) (tailoring information presented to a user based on particular information); *Affinity Labs of Texas, LLC v. Amazon.com, Inc.*, 838 F.3d 1266, 1271 (Fed. Cir. 2016) (customizing a user interface to have targeted advertising based on user information); *Morsa v. Facebook, Inc.*, 77 F. Supp. 3d 1007, 1013 (C.D. Cal. 2014) (concluding that targeting advertisements to certain consumers is no more than an abstract idea), *aff'd*, 622 F. App'x 915 (Fed. Cir. 2015).

Having concluded that claim 1 recites a judicial exception (Step 2A, Prong 1), i.e., an abstract idea, we next consider whether the claim recites additional elements that integrate the judicial exception into a practical application (step 2A, Prong 2). Here, the additional elements recited in claim 1, beyond the abstract idea, include the claimed “one or more processors” (limitation (a)), “one or more memory devices storing instructions that, when executed by the one or more processors, performs the operations of [limitations (c)–(h)]” (limitation (b)), and “at least one client device” (element (c)). These elements are described in the Specification at a

high level of generality, i.e., as an assembly of generic computer components. *See, e.g.*, Spec. ¶¶ 21, 27, 28.

We find no indication in the Specification, nor does Appellant direct us to any indication, that the operations recited in claim 1 require any specialized computer hardware or other inventive computer components, i.e., a particular machine, invoke any assertedly inventive programming, or that the claimed invention is implemented using other than generic computer components to perform generic computer functions. *See DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014) (“[A]fter *Alice*, there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible.”).

We also find no indication in the Specification that the claimed invention effects a transformation or reduction of a particular article to a different state or thing. Nor do we find anything of record, short of attorney argument, that attributes an improvement in technology and/or a technical field to the claimed invention or that otherwise indicates that the claimed invention integrates the abstract idea into a “practical application,” as that phrase is used in the 2019 Revised Guidance.⁵

Appellant argues that claim 1 is patent-eligible because claim 1 allegedly avoids preemption. *See* App. Br. 16–18, 22–23. Appellant’s argument is unpersuasive of Examiner error. Although preemption is the

⁵ The 2019 Revised Guidance references MPEP § 2106.05(a)–(c) and (e) in describing the considerations that are indicative that an additional element or combination of elements integrates the judicial exception, e.g., the abstract idea, into a practical application. *Id.* at 55. If the recited judicial exception is integrated into a practical application, as determined under one or more of these MPEP sections, the claim is not “directed to” the judicial exception.

concern that drives the exclusion of abstract ideas from patent eligible subject matter (*see Alice*, 573 U.S. at 216), it is not a separate test for patent eligibility. Instead, the proper test for determining whether a claim recites patent eligible subject matter is to apply the two-step framework that the Supreme Court delineated in *Alice* and *Mayo*. “Where a patent’s claims are deemed only to disclose patent ineligible subject matter under the *Mayo* framework . . . , preemption concerns are fully addressed and made moot.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015). “[P]reemption may signal patent ineligible subject matter, [but] the absence of complete preemption does not demonstrate patent eligibility.” *Id.*

Appellant argues that, similar to the claims in *McRO, Inc. v. Bandai Namco Games America, Inc.*, 837 F.3d 1299 (Fed. Cir. 2016), claim 1 focuses on “*specific steps*” instead of a result (App. Br. 27), and uses a process with “no conventional equivalent” (*id.* at 30). However, contrary to Appellant’s suggestion, the claims at issue in *McRO* were not deemed patent-eligible on account of their specificity or non-conventionality. Instead, the Federal Circuit premised its determination that the claimed invention was patent-eligible because it was directed to a “technological improvement over the existing, manual 3-D animation techniques” through the use of “limited rules in a process specifically designed to achieve an improved technological result in conventional industry practice.” *McRO*, 837 F.3d at 1316. In *McRO*, an improvement in computer animation was realized using rules to define an output morph weight set stream as a function of phoneme sequence and time of said phoneme sequence, obviating the need of human animators to make visual and subjective determinations for the morph weight sets. *Id.* at 1306, 1313.

Here, Appellant asserts that claim 1's limitations (d) and (e) are similar to "the 'rules with certain common characteristics' of *McRO*." App. Br. 30 (citing *McRO*, 837 F.3d at 1314). Yet, limitation (d) of claim 1 recites "grouping the financial transactions into a plurality of clusters based on the geographic locations by determining a geographic area that includes a number of financial transactions exceeding a threshold number of financial transactions" and limitation (e) recites "generating a shopping corridor associated with the customer and the periodically received financial transaction information based on at least the plurality of clusters." These limitations (e.g., grouping financial transactions, generating a shopping corridor) focus on the abstract idea itself, and do not recite additional elements indicative of an improvement to technology.

For example, the limitations recite desired functionality (e.g., generate a shopping corridor, group the financial transactions into a plurality of clusters based on the geographic locations) without specifying any particular technique for accomplishing the desired result. *See Two-Way Media Ltd. v. Comcast Cable Communications, LLC*, 874 F.3d 1329, 1337 (2017) (holding that a claim that recites the functional results of converting, routing, controlling, monitoring and accumulating records, without sufficiently describing how to achieve this result, is directed to an abstract idea). Appellant cites the Specification at paragraph 46 and Figure 4, reference 420 as describing limitation (d), and paragraphs 33, 45, and 48, and Figures 3, reference 340 and Figure 4, reference 440 as describing limitation (e). App. Br. 7–8. But these portions of the Specification also fail to provide any technological details for how to achieve the desired results. *See Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1342 (Fed. Cir.

2017) (explaining that “[o]ur law demands more” than claim language that “provides only a result-oriented solution, with insufficient detail for how a computer accomplishes it”).

Similarly, Figure 4 of Appellant’s Specification shows an exemplary process for determining a shopping corridor. Spec. ¶ 45. After receiving geo-coded transaction data for multiple transactions and for multiple customers, a server at step 410 of the process shown in Figure 4 identifies geo-coded transactions associated with the same customer. *Id.* ¶ 45, Fig. 4. The server identifies each transaction associated with a particular account or associated with a specific customer relating to a financial service account. *Id.* Next, at step 420 of the process shown in Figure 4, the server groups the geo-coded transactions using “a preferred clustering algorithm.” *Id.* ¶ 46. The Specification does not provide details regarding the preferred clustering algorithm. Instead, the Specification provides that the financial transactions are clustered for a particular geographic region, such as a mile radius around a customer’s home address, a half-mile radius around a customer’s place of work, or a retailer location (e.g., a shopping mall, shopping plaza, or merchant location). *Id.*

At step 440 of the process shown in Figure 4, the server maps one or more pathways between each cluster, using the geo-coded transaction data to identify movement among clusters. *Id.* ¶ 48. In this way, the shopping corridor identifies the geographic locations in which customers commonly make transactions, and the pathways through the identified locations. *Id.* ¶ 33. The cited portions of the Specification describe a desired result (i.e., generating a shopping corridor based on at least the plurality of clusters), but do not describe a manner for accomplishing this goal that

improves technology. We do not find, and Appellant does not identify, any specific rules with specific characteristics that improve computer animation techniques or some other technology analogous to the situation in *McRO*.

Considered in light of the Specification, Appellant's claim 1 appears to be focused on improving an abstract idea (i.e., a commercial interaction) by generating and using a map to provide a financial service, not on any improvement to computer functionality or technology. At best, the additional elements in claim 1 recite generic computer components used in their ordinary capacity to implement the abstract idea.

We find no indication in the record that attributes the additional elements recited in claim 1 to an improvement in the functioning of a computer or an improvement to other technology, to implementing the abstract idea with a particular machine that is integral to the claim, that effects a transformation or reduction of a particular article to a different state or thing, that applies the abstract idea in some other meaningful way beyond using a computer as a tool to perform an abstract idea, or that otherwise indicates that the claimed invention integrates the abstract idea into a "practical application," as that phrase is used in the 2019 Revised Guidance.

Inventive Concept: Step Two of the Mayo/Alice Framework; Step 2B of the 2019 Revised Guidance

Having determined under Step 2A that claim 1 is directed to an abstract idea, we next consider under Step 2B, the second step of the *Mayo/Alice* framework, whether claim 1 adds specific limitations beyond the judicial exception that are not "well-understood, routine, conventional" in the field, or simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.

As described above, the only claim elements beyond the abstract idea are the claimed generic computing components used to perform the recited steps. Appellant cannot reasonably maintain, nor do they, that there is a genuine issue of material fact regarding whether operation of any of these components is well-understood, routine, or conventional, where, as here, there is nothing in the Specification to indicate that the operations recited in claim 1 require any specialized hardware or inventive computer components or that the claimed invention is implemented using other than generic computer components to perform generic computer functions, e.g., receiving, grouping, and generating information.

Appellant argues that claim 1 recites significantly more than the abstract idea because it “improves the performance of the system itself by allowing customers and financial service providers to view and use transaction data without tedious and inefficient repeated access to bank statements and transaction histories.” App. Br. 40 (citing Spec. ¶¶ 3–4). However, we are not persuaded that allowing customers to view and use transaction data more efficiently and with less tedium reflects an improvement in the functioning of a computer or an improvement to another technology or field, instead of an improvement to the abstract idea itself.

We also are not persuaded by Appellant’s argument that claim 1 recites an inventive concept because the prior art fails to teach or suggest multiple elements of the claims, including limitations (c) and (d). Neither a finding of novelty nor a non-obviousness determination automatically leads to the conclusion that the claimed subject matter is patent-eligible. 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 Corp.*, 573 U.S. at 217–18 (citation omitted). “Groundbreaking, innovative, or even brilliant discovery does not by itself satisfy the § 101 inquiry.” *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 591 (2013). 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. 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.”).

We are not persuaded, on the present record, that the Examiner erred in rejecting independent claim 1 under 35 U.S.C. § 101. Therefore, we sustain the Examiner’s rejection of claim 1, and claims 11 and 17, which fall with claim 1.

Dependent Claims 4–10, 14–16, 20, and 22–25

We decline Appellant’s invitation to find error in the Examiner’s decision not to address the patent-eligibility of each of the dependent claims separately. *See App. Br.* 43–46. There is no dispute that Examiners are instructed to evaluate the patent-eligibility of each claim individually. But, in this case, consideration of each claim individually does not require a separate written analysis for each individual claim. Moreover, we agree with the Examiner that the pending claims are all directed to the same abstract idea, albeit at differing levels of specificity. *Cf. Content Extraction & Transmission LLC v. Wells Fargo Bank, N.A.*, 776 F.3d 1343, 1348 (Fed.

Cir. 2014) (explaining that when all claims are directed to the same abstract idea, “addressing each claim of the asserted patents [is] unnecessary.”).

Appellant additionally argues that claim 9 is not directed to an abstract idea because it, like the claims in *McRO*, focuses on “specific means or methods that improves “the relevant technology.” App. Br. 44. We find these arguments unpersuasive for the same reasons discussed above with respect to claim 1. Claim 9 recites that determining outlier purchases includes “normalizing each of the transactions based on a corresponding central geographic location;” and “determining outlier purchases based on the normalized financial transactions.” However, each of these limitations is recited as a result-based functional limitation without specifying any particular manner for normalizing or determining outlier purchases that improves the relevant technology. Likewise, the Specification describes at paragraph 51 that the server “may normalize the transactions” and “use the normalized transactions to determine outliers.” Paragraph 51 further provides examples of outlier purchases. But it does provide any technical details describing how to accomplish the claimed normalization or how to use the normalized transactions. We are not persuaded that claim 9 provides a technological improvement as opposed to merely narrowing the abstract idea.

Appellant additionally argues that claim 9 recites significantly more than the abstract idea. In this regard, Appellant asserts that the steps add unconventional steps that confine the claim to a particular useful application. App. Br. 44. Yet, the steps of normalizing the transactions and determining outlier purchases are part of the abstract idea itself and, thus, cannot be an inventive concept under step two of the *Mayo/Alice* test:

It is clear from *Mayo* that the “inventive concept” cannot be the abstract idea itself, and *Berkheimer* [*v. HP, Inc.*, 881 F.3d 1360 (Fed. Cir. 2018)] . . . 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 v. HP Inc., 890 F.3d 1369, 1374 (Fed. Cir. 2018) (Moore, J., concurring in denial of petition for rehearing en banc). Moreover, as described above, claim 9 does not recite any unconventional manner for normalizing or determining that indicates an inventive concept that amounts to significantly more than the abstract idea.

Claim 10 recites that “location information includes latitude and longitude information corresponding to each of the plurality of financial transactions.” Appellant provides the same additional arguments with respect to claim 10 as provided with respect to claim 9. However, claim 10 further merely limits the content of the claimed location information. Yet, information is itself abstract and further limiting the content of limitation does not make claim 10 other than abstract. *See, e.g., SAP Am. In. v. InvestPic LLC*, 898 F.3d 1161, 1168 (Fed. Cir. 2018) “even if a process of collecting and analyzing information is ‘limited to particular content’ or a particular ‘source,’ that limitation does not make the collection and analysis other than abstract.”

We are not persuaded, on this record, that the Examiner erred in rejecting dependent claims 4–10, 14–16, 20, and 22–25 under 35 U.S.C. § 101. Therefore, we sustain the Examiner’s rejection of the dependent claims.

Appeal 2017-009559
Application 14/132,995

DECISION

The Examiner's rejection of claims 1, 4–11, 14–17, 20, and 22–25 under 35 U.S.C. § 101 is affirmed.

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