



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/492,558	06/08/2012	Patricia M. Tomlinson	2122-1	3853
30621	7590	06/05/2019	EXAMINER	
JENSEN & PUNTIGAM, P.S. 2033 6th Ave Suite 990 SEATTLE, WA 98121			CHAMPAGNE, LUNA	
			ART UNIT	PAPER NUMBER
			3627	
			MAIL DATE	DELIVERY MODE
			06/05/2019	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte
PATRICIA M. TOMLINSON¹

Appeal 2017-010210
Application 13/492,558
Technology Center 3600

Before ERIC S. FRAHM, SCOTT B. HOWARD, and
MATTHEW J. McNEILL, *Administrative Patent Judges*.

FRAHM, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant seeks our review under 35 U.S.C. § 134(a) of the Examiner's decision rejecting claims 1–14, which constitute all the claims pending in this application (App. Br. 6; Final Act. 2–10). We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ Appellant Patricia M. Tomlinson is the applicant, and is identified as the real party in interest (App. Br. 3).

STATEMENT OF THE CASE

Introduction

Appellant's invention relates to an online membership-based inventory system for stagers, designers, affiliates and their customers to facilitate the storage, renting, and filling of staging inventory (Spec. ¶ 1). The system includes an online rental pool for stagers to share inventory, an online resale venue for selling furniture and accessories no longer being used, and a warehouse distribution center that offers short-term fluctuating rates for storage (Spec. ¶ 16). In one embodiment, the system further includes credit card processing for all billing services, customized bookkeeping, inventory management, pickup and delivery services, and warehouse storage of furniture and accessories which are managed with an online website (Spec. ¶ 16).

Illustrative Claim

Independent claim 1, reproduced below, is illustrative of the claimed subject matter:

1. An online membership-based inventory system, enabling storage, rental and sharing of inventory items therein for a plurality of members, comprising:

a processor operating with a stored software program;
a membership portion operated by the processor for receiving and accepting membership applications of stagers and designers for homes;

a rental pool of inventory, including inventory items of said stager and designer members;

a warehouse for physically storing all inventory items available to the stager and designer members[,] wherein said all inventory items are stored, rented and returned in operation of

the inventory system, wherein inventory items are physically transmitted to the warehouse by members for rental and physically transmitted to members from the warehouse to satisfy orders provided by members for staging and/or design projects, and wherein inventory items in the warehouse are out of physical control of the members;

a warehouse inventory portion operated by the processor for storing information concerning inventory items available to the members from the warehouse and for logging inventory items into and out of the warehouse;

an order-based communication portion operated by the processor enabling the staging and designer members to access the stored inventory information and to select, order and return items from the warehouse inventory for rental and/or to store inventory items in the warehouse, wherein a single order by a member can be for both a single item or a plurality of items from the warehouse inventory in the same order, wherein the plurality of items in the single order can be owned both by a single member or by a plurality of different members; and

an accounting portion operated by the processor for tracking and providing accounting information to the members concerning rentals from the warehouse inventory by the members, and/or storage of inventory items in the warehouse, including inventory items of the members, wherein the accounting information includes rental payments made to members for rental of their inventory items and payments made by members for completed orders of rental items from warehouse inventory owned by others, wherein payments are made under control of the accounting portion to all of the individual owners of inventory items listed on each order, respectively, on an order by order basis.

The Examiner's Rejections

(1) Claims 1–14 stand rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter (Final Act. 2).

(2) Claims 1–7, 10, 11, and 14 stand rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Yoon (US 8,682,804 B1), Saltzman et al. (US 7,895,081 B1) (“Saltzman”), and Bezos et al. (US 2003/0083961 A1) (“Bezos”) (Final Act. 3–7).

(3) Claim 8 stands rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Yoon, Saltzman, Bezos, and Official Notice (Final Act. 7).

(4) Claim 9 stands rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Yoon, Saltzman, Bezos, and Walker (US 2008/0065489 A1) (Final Act. 7–8).

(5) Claims 12 and 13 stand rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Yoon, Saltzman, Bezos, and Yu (US 2010/0153277 A1) (Final Act. 8).

Issues on Appeal

Based on Appellant’s arguments in the Appeal Brief (App. Br. 6–12), in light of the Examiner’s response to Appellant’s arguments in the Appeal Brief (Ans. 2–6), the following principal issues are presented on appeal:

(1) Did the Examiner err in rejecting claims 1–14 under 35 U.S.C. § 101 because the claimed invention is directed to patent-ineligible subject matter?

(2) Did the Examiner err in rejecting claims 1–14 under 35 U.S.C. § 103(a) as being unpatentable over the base combination of Yoon, Saltzman and Bezos?

ANALYSIS

Patent Eligibility

Under 35 U.S.C. § 101, a patent may be obtained for “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.” The Supreme Court has “long held that this provision contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014) (quoting *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)).

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, 77–80 (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*, 573 U.S. at 217. Assuming that a claim nominally falls within one of the statutory categories of machine, manufacture, process, or composition of matter, the first step in the analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts” (*id.*), e.g., to an abstract idea. *See Alice*, 573 U.S. at 219 (“On their face, the claims before us are drawn to the concept of intermediated settlement, i.e., the use of a third party to mitigate settlement risk.”); *see also Bilski v. Kappos*, 561 U.S. 593, 611 (2010) (“Claims 1 and 4 in petitioners’ application explain the basic concept of hedging, or protecting against risk.”). Concepts determined to be abstract ideas, and thus patent ineligible include, but are not limited to, 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.”). The Supreme Court continued by qualifying its findings, indicating that a claim “seeking patent protection for that formula in the abstract . . . is not accorded the protection of our patent laws, . . . and this principle cannot be circumvented by attempting to limit the use of the formula to a particular technological environment.” *Id.* (citing *Benson* and *Flook*); *see, e.g., id.* at 187 (“It is now commonplace that an *application* of a law of nature or mathematical formula to a known structure or process may well be deserving of patent protection.”).

If the claims are not directed to an abstract idea, the inquiry ends. Otherwise, the inquiry proceeds to the second step of the *Alice* and *Mayo* framework where the elements of the claims are considered “individually

and ‘as an ordered combination’ to determine whether the additional elements ‘transform the nature of the claim’ into a patent-eligible application.” *Alice*, 573 U.S. at 217 (quoting *Mayo*, 566 U.S. at 78–79). This second step is described as “a search for an ‘inventive concept’—*i.e.*, an element or combination of elements that is ‘. . . significantly more than . . . the [ineligible concept] itself.’” *Id.* at 217–218 (alteration in original) (quoting *Mayo*, 566 U.S. at 72–73). “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].’” *Alice*, 573 U.S. at 221 (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 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. We, therefore, look to whether the claims focus on a specific means or method that improves the relevant technology or are instead directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery. *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1336 (Fed. Cir. 2016).

The PTO recently published revised guidance on the application of § 101. USPTO’s *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019) (hereinafter “2019 Revised Guidance”). Under that guidance, after determining that a claim falls within one of the statutory categories under § 101 (hereinafter “Step 1”), we 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 activities such as a fundamental economic practice, or mental processes) (hereinafter “Step 2A, prong 1”); and

(2) additional elements that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h)) (hereinafter “Step 2A, prong 2”).

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 § 106.05(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.²

See 2019 Revised Guidance.

With regard to the patent eligibility rejection, we have reviewed the Examiner’s rejection (Final Act. 2) in light of Appellant’s contentions in the Appeal Brief (App. Br. 6–9) that the Examiner has erred, as well as the Examiner’s response to Appellant’s arguments in the Appeal Brief (Ans. 2–3). We disagree with Appellant’s arguments in the Appeal Brief (*see* App. Br. 6–9). Except as noted below, we adopt as our own: (1) the findings, conclusions, and reasons set forth by the Examiner in the action from which this appeal is taken (Final Act. 2), and (2) the reasons set forth by the Examiner in the Examiner’s Answer in response to Appellant’s Appeal Brief (Ans. 2–3). We concur with the conclusions reached by the Examiner, as

² Items (3) and (4) are collectively referred to as “Step 2B” hereinafter and in the 2019 Revised Guidance.

well as the Examiner's interpretations of the claim limitations. We highlight the following additional points.

Revised Guidance Steps 1 and 2A, Prong 1

The Examiner, rejecting the claims as a single group, determines that the claims are directed to the abstract ideas of (i) “enabling rental of shared inventory items” by “manipulating data to facilitate rental of items” in a manner well-known to the industry (Final Act. 2); and (ii) “tracking inventory and facilitating exchange among members” (Ans. 3), which are “conventional business practices” (Ans. 3), and therefore an abstract idea. We agree.

Appellant contends the Examiner erred by “describing [the] claim[s] at a high level of abstraction, ‘untethered from the language of the claim’” (App. Br. 6), because “the claimed system is not a broadly defined inventory rental system where the inventory items are owned by an entity other than the customers, but rather a system where all of the inventory items are owned by and are available only to members” (App. Br. 6). Notably, sole independent claim 1 does not recite “where all of the inventory items are owned by and are available only to members” as argued by Appellant (*see* App. Br. 6). Appellant goes on to argue that the “‘brick and mortar’ aspect” of the recited inventory system is “a specific improvement in how an inventory system comprised of members, with inventory owned by members, operates” (App. Br. 7), because the recited inventory system includes a physical warehouse, where “[t]he warehouse provides for storage of physical inventory items” (App. Br. 8).

We are not persuaded of Examiner error. Appellant argues the claims together as a single group (App. Br. 6 (“Independent claim 1 and dependent

claims 2–14 stand or fall together relative to 35 USC 101”); *see also generally* App. Br. 6–9), and we select independent claim 1 as representative in our analysis below. *See* 37 C.F.R. § 41.37(c)(1)(iv) (“When multiple claims subject to the same ground of rejection are argued as a group or subgroup by appellant, the Board may select a single claim from the group or subgroup and may decide the appeal as to the ground of rejection with respect to the group or subgroup on the basis of the selected claim alone.”).

First, under Step 1, we look to whether claim 1 falls within a statutory category (i.e., a process, machine, manufacture, or composition of matter). Claim 1 recites: “An online membership-based inventory system, enabling storage, rental and sharing of inventory items therein for a plurality of members, comprising . . . a processor . . . a membership portion . . . a rental pool of inventory . . . a warehouse . . . a warehouse inventory portion . . . an order-based communication portion . . . and an accounting portion,” where all of the recited portions are “operated by the processor” (claim 1). Although claim 1 is mainly concerned with the steps of a process, claim 1 recites a system having a processor, physical inventory, and a warehouse. Accordingly, we determine that claim 1 falls within the “machine” and “process” categories of § 101.

Next, under Step 2A, Prong 1, we determine whether claim 1 recites an abstract idea. Claim 1 recites the following steps:

- (i) “receiving and accepting membership applications,” “storing information concerning inventory items,”
- (ii) “logging inventory items,”

- (iii) “enabling access” to “stored inventory information” and “select[ing], order[ing] and return[ing] items from the warehouse inventory,” and
- (iv) “tracking and providing accounting information” including [a] “rental payments” and “payments made by members for completed orders” . . . “and/or [b] storage of inventory items in the warehouse, including inventory items of the members.”

Claim 1 essentially recites a warehouse inventory system for renting items to members, which is a business practice and fundamental economic practice, which are both methods of organizing human activity. And, based on the above construction, the claim 1 limitations excerpted above also recite gathering payment information from members and performing at least part of a payment transaction (*see e.g.*, the functions recited in the “accounting portion” at the end of claim 1). This is analogous to a clerk at a warehouse managing a rental inventory and taking payments, except that here, the process is performed by the processor through the World Wide Web.

The Federal Circuit has found that performing a payment transaction, including the collecting and storing of transaction data (such as in this case, inventory and payment information), is a well-known business practice that is not patent eligible. *See, e.g., Smart Sys. Innovations, LLC v. Chicago Transit Auth.*, 873 F.3d 1364, 1371–72 (Fed. Cir. 2017) (“Taken together, the Asserted Claims are directed to the formation of financial transactions in a particular field . . . and data collection related to such transactions,” which is “an abstract idea under *Alice* step one.”); *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat’l Ass’n*, 776 F.3d 1343, 1347

(Fed. Cir. 2014) (summarizing precedent in which “claims directed to the performance of certain financial transactions” involve abstract ideas and holding that claims drawn to the abstract concept of financial transaction-related “data collection, recognition, and storage is undisputedly well-known”); *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1370 (Fed. Cir. 2011) (finding a method for “verifying the validity of a credit card transaction over the Internet” to be an abstract idea).

We are not persuaded by Appellant’s argument that the Examiner has oversimplified the claims in determining they are focused on an abstract idea (*see* App. Br. 6–7). As discussed above, certain limitations in claim 1 essentially recite the fundamental economic practice of tracking and providing payment and inventory information. The fact that we or the Examiner may refer to this practice by the shorthand “enabling rental of shared inventory items” does not change the outcome of the analysis. *See Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1240–41 (Fed. Cir. 2016) (“An abstract idea can generally be described at different levels of abstraction. . . . The Board’s slight revision of its abstract idea analysis does not impact the patentability analysis.”).

Accordingly, we determine that the claim 1 limitations quoted above recite a fundamental economic practice or business relation between people, which falls within the category of abstract ideas referred to as certain methods of organizing human activity under the Revised Guidance.

Revised Guidance Step 2A, Prong 2

Appellant’s claim 1 also recites additional elements beyond the abstract storage and rental system. These additional elements include the following components: “a processor,” “a rental pool of inventory,” and “a

warehouse.” Under Step 2A, Prong 2, we evaluate these additional elements to determine whether the additional elements integrate the abstract payment transaction into a practical application.

Regarding the “processor,” the Specification provides that “[a]ll services are managed with an on-line website” (Spec. ¶ 16), and “[t]he system is carried out with a computer program control, shown generally at 31, controlling all of the elements of Figure 1” (Spec. ¶ 23). Further, “[t]he inventory system is connected to the bookkeeping system and billing system, which is automated. The only manual operation is the warehouse team, which physically moves the furniture, and the person responsible for logging it into the on-line system” (Spec. ¶ 24). Finally, Appellant does not provide the complete code needed to perform the functions of the invention, because “original Figures 1-9 and the above description [*see* Spec. ¶¶ 23–32] are sufficient to enable an ordinary skilled programmer to produce a code to accomplish the functionality of the overall system” (Spec. ¶ 32).

The written description thus describes the processor operating on the World Wide Web in a manner that indicates the components and the functions they perform were well known in the art. *See Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1384 (Fed. Cir. 1986) (explaining that “a patent need not teach, and preferably omits, what is well known in the art”); *see also Intellectual Ventures I LLC v. Erie Indem. Co.*, 850 F.3d 1315, 1331 (Fed. Cir. 2017) (“The claimed mobile interface is so lacking in implementation details that it amounts to merely a generic component (software, hardware, or firmware) that permits the performance of the abstract idea, i.e., to retrieve the user-specific resources.”).

In view of the foregoing, a conventional computer can be used to implement any of the components or steps of claim 1. Accordingly, we determine that the recited components merely amount to using computers as tools to implement the abstract payment transaction and inventory tracking, which does not provide for the integration of the abstract idea into a practical application. *See* MPEP § 2106.05(f) (“Use of a computer or other machinery in its ordinary capacity for economic or other tasks (*e.g.*, to receive, store, or transmit data) or simply adding a general purpose computer or computer components after the fact to an abstract idea (*e.g.*, a fundamental economic practice or mathematical equation) does not provide significantly more.”).

The steps of “receiving and accepting membership applications” and “tracking and providing accounting information” including [a] “rental payments” and “payments made by members for completed orders” . . . “and/or [b] storage of inventory items in the warehouse, including inventory items of the members” also amount to using computers as tools to perform the abstract idea. *See* MPEP § 2106.05(f). Because Appellant discloses using an on-line website to manage all services (Spec. ¶ 16), and the processor of the recited invention (*see* Fig. 1, control 31) runs software to control the provision of the on-line website, the recited “online membership-based inventory system” only supplements the recited “rental pool of inventory” and “warehouse” with the use of “a processor” which runs software on the World Wide Web. In other words, receiving membership applications and payments through a Web page, and then generating and sending successive iterations of the Web page, is part of the normal operation of the World Wide Web over the Internet. The Federal Circuit has

found that the recitation of basic Web features does not establish patent eligibility. *See Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1347–48 (Fed. Cir. 2015) (agreeing with the district court’s finding that the claimed “use of a conventional web browser Back and Forward navigational functionalities without data loss in an online application consisting of dynamically generated web pages” was not patent eligible).

With regard to the “rental pool of inventory” and “warehouse,” we evaluate these additional elements to determine whether they integrate the abstract idea discussed above (the judicial exception) into a practical application (USPTO’s Step 2A, Prong 2). The additional elements of inventory and a warehouse do not apply the judicial exception in a manner that imposes a meaningful limit on the judicial exception, such that it is more than a drafting effort designed to monopolize the exception. *See Alice*, 573 U.S. at 221–24 (citing *Mayo*, 566 U.S. at 78–85). Rather, claim 1 recites a processor and a warehouse containing inventory that are utilized as tools to perform the judicial exception. Utilizing a computer as a tool to perform the abstract idea does not impose a meaningful limit on an abstract idea. *See* MPEP § 2106.05(f); *see also Alice*, 573 U.S. at 223 (“[I]f [the] recitation of a computer amounts to a mere instruction to implement an abstract idea on a computer that addition cannot impart patent eligibility” (quotations and internal citations omitted)).

Accordingly, we find claim 1 recites a judicial exception, namely, the combination of the abstract ideas of collecting and storing inventory and transaction data, and evaluating the inventory and transaction data to identify a provider of a desired good or service that meets a desired provider characteristic. *See Recognicorp, LLC v. Nintendo Co.*, 855 F.3d 1322, 1327

(Fed. Cir. 2017) (“Adding one abstract idea (math) to another abstract idea (encoding and decoding) does not render the claim non-abstract.”).

We are not persuaded by Appellant’s argument that the “claimed combination thus defines a practical improvement” (App. Br. 9). As discussed above, the fact that claim 1 uses a processor to perform the recited functions does not add a meaningful limitation because this is part of the normal operation of warehouses and rental processes, and merely shows the use of basic technology as a tool to implement the abstract idea.

Accordingly, we conclude that claim 1, and the remaining claims grouped therewith, are directed to an abstract idea that is not integrated into a practical application.

Revised Guidance Step 2B

Having concluded claim 1 is directed to an abstract idea under Step 2A, we next evaluate the additional elements individually and in combination under Step 2B to determine whether they provide an inventive concept (i.e., whether the additional elements amount to significantly more than the exception itself).³ As directed by our reviewing court, we search for an “‘inventive concept’ sufficient to ‘transform the nature of the claim into a patent-eligible application.’” *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1312 (Fed. Cir. 2016) (quoting *Alice*, 573 U.S. at 217). The implementation of the abstract idea involved must be “more than

³ We note the patent eligibility inquiry may contain underlying issues of fact. *Mortg. Grader, Inc. v. First Choice Loan Servs. Inc.*, 811 F.3d 1314, 1325 (Fed. Cir. 2016). In particular, “[t]he question of whether a claim element or combination of elements is well-understood, routine and conventional to a skilled artisan in the relevant field is a question of fact.” *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1368 (Fed. Cir. 2018).

performance of ‘well-understood, routine, [and] conventional activities previously known to the industry.’” *Content Extraction*, 776 F.3d at 1347–48 (alteration in original) (quoting *Alice*, 573 U.S. at 225). The “inventive concept” “must be significantly more than the abstract idea itself, and cannot simply be an instruction to implement or apply the abstract idea on a computer.” *Bascom Global Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1349 (Fed. Cir. 2016) (citation omitted).

Here, the Examiner determined that claim 1 does not add significantly more to the abstract idea (Final Act. 2; Ans. 3). Appellant contends the recitation of a “warehouse containing all of the items of all of the individual members” add specific limitations other than well-understood, routine, and conventional activities by “enabl[ing] stagers and designers to have available to them all of their furniture and accessory requirements on a short term basis, with a single order” (App. Br. 8), thus provides significantly more than the abstract idea identified by the Examiner. We are not persuaded of Examiner error.

As previously discussed, the additional elements in claim 1 that comprise various components and steps can be implemented using conventional computers, rental inventory, and a warehouse. That is, Appellant’s Specification itself describes the additional elements as being well-understood, routine, and conventional. Such conventional computer components and operations “do not alone transform an otherwise abstract idea into patent-eligible subject matter.” *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1096 (Fed. Cir. 2016) (citing *DDR Holdings*, 773 F.3d at 1256). Therefore, we are not persuaded by Appellant’s argument that the

“claimed combination thus defines a practical improvement and provides ‘significantly more’ than the abstract idea” (App. Br. 9).

Appellant’s argument that “the claimed order portion and accounting portion enables convenient system accommodation for thousands of orders from hundreds of different members for a large number of items at separate warehouse locations” is unpersuasive for two reasons. *Id.* First, claim 1 only recites a single warehouse. Second, “relying on a computer to perform routine tasks more quickly or more accurately is insufficient to render a claim patent eligible.” *See OIP Technologies, Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015).

Therefore, under the USPTO’s Revised Patent Eligibility Guidance, informed by our governing case law concerning 35 U.S.C. § 101, the Examiner did not err in concluding claim 1 (and claims 2–14 grouped therewith) is directed to a judicial exception, i.e., an abstract idea or combination of abstract ideas, without significantly more, and thus is patent-ineligible under § 101. In view of the foregoing, we sustain the Examiner’s § 101 rejection of claims 1–14 as being directed to patent-ineligible subject matter.

Obviousness

With regard to the obviousness rejections, we have reviewed the Examiner’s rejections (Final Act. 3–10) in light of Appellant’s contentions in the Appeal Brief (App. Br. 9–12) that the Examiner has erred, as well as the Examiner’s response to Appellant’s arguments in the Appeal Brief (Ans. 3–6). No Reply Brief has been presented. Therefore, Appellant has not disputed the Examiner’s articulated reasoning and findings found at pages

3–6 of the Answer, including the new citations to Yoon (*see* Ans. 4), Saltzman (*see* Ans. 4), and Bezos (*see* Ans. 5–6). We disagree with Appellant’s arguments in the Appeal Brief. Except as noted below, we adopt as our own: (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken (Final Act. 3–10) and (2) the reasons set forth by the Examiner in the Examiner’s Answer in response to Appellant’s Appeal Brief (Ans. 3–6). We concur with the conclusions reached by the Examiner, as well as the Examiner’s interpretations of the claim limitations. We highlight the following additional points.

The Examiner has provided a factual basis and articulated reasoning with a rational underpinning to support the conclusion of obviousness with regard to claim 1 (*see* Final Act. 3–5; Ans. 3–6). *See KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007). We agree with the Examiner that:

Saltzman facilitates item transactions in a marketplace, by taking physical custody of items being provided from customers and then providing those items to the customers who desire to receive them. The marketplace may take various forms, such as brick-and-mortar. Therefore, Saltzman teaches taking physical custody of items in a brick and mortar store/warehouse. (See e.g. col. 4, lines 51-55; col. 12, lines 59-63).

(Ans. 3–4; *see also* Final Act. 4 (making a similar finding)).

Specifically, column 12, lines 59 through 63 of Saltzman discloses “taking physical custody of items being provided from customers and then providing those items to the customers who desire to receive them” (12:59–63). Column 4, lines 51–55 of Saltzman supports this disclosure by describing that “systems such as the new item marketplace **130** and the used

item marketplace **140** may each take various forms in various embodiments, *such as physical brick-and-mortar stores* operated by retailers, physical or electronic auction sites, etc” (4:51–55) (emphasis added). Thus, contrary to Appellant’s arguments that Saltzman does not teach or suggest, “a brick and mortar warehouse in which staging items are stored, rented and returned” (App. Br. 10), Saltzman teaches or suggests a brick and mortar warehouse for specifically storing items.

Appellant argues, “Bezos involves individual purchasers who are *independent, unrelated* to other purchasers, who purchase items from unrelated sellers, who themselves are *unrelated*. It is simply a buy/sell marketplace arrangement” (App. Br. 11) (emphasis added). We find Appellant’s arguments are not commensurate in scope with the express language of independent claim 1, because claim 1 does not require individual purchasers be independent and unrelated to other purchasers. Claim 1 does not require the members to be independent and/or unrelated to other members or purchasers. Instead, claim 1 merely recites that purchases are made by “stager and designer members.” As a result, Appellant’s arguments directed to Bezos’ purchasers not being individual purchasers who are independent and unrelated to other purchasers, and/or who purchase items from unrelated sellers, are not persuasive since they are not commensurate with the scope of claim 1. *See In re Self*, 671 F.2d 1344, 1348 (CCPA 1982) (“[A]ppellant’s arguments fail from the outset because... they are not based on limitations appearing in the claims.”); *In re Hiniker Co.*, 150 F.3d 1362, 1369 (Fed. Cir. 1998) (“The] proffered facts . . . are not commensurate with the claim scope and are therefore unpersuasive.”).

Appellant further argues, “the order system of Bezo[s] does not teach or suggest including payments by others for items provided by the purchaser” (App. Br. 11). However, we agree with the Examiner (Ans. 6) that:

Bezos teaches that purchase histories of the users are maintained and the system allows them to resell previously bought items by simply selecting that item from a listing of his/her purchase history (see e.g. paragraph 0059). Therefore, since the user in Bezos can be both a buyer and a seller, and the system handles the accounting process, it clearly anticipates “including payment by others for items provided by the purchaser”.

(Ans. 6; *see also* Final Act. 5, citing Bezos ¶¶ 83, 109 (making a similar finding)).

Specifically, paragraph 59 of Bezos discloses “users may also be permitted to add marketplace listings from their respective purchase histories...the marketplace system maintains user purchase histories that reflect the purchases made by each user of the system” (Bezos ¶ 59). And, paragraph 83 of Bezos discloses “the marketplace system typically handles the collections process (e.g., charges the buyer’s credit card), and deposits the resulting proceeds (minus a commission) into a bank account of the seller)” (Bezos ¶ 83). Thus, Bezos teaches or suggests including payments by others for items provided by the purchaser.

In view of the foregoing, we also disagree with Appellant’s assertion that “[i]n the marketplace system of Bezos one way orders are made and goods are received by a customer from a selected one of perhaps several suppliers, independent of the customer and of each other” (App. Br. 11).

With regard to Appellant’s arguments (App. Br. 11) concerning a lack of motivation or reason for one skilled in the art to utilize the teaching of Bezos relative to a membership-based inventory control system involving a related plurality of members who share a common accessible inventory, we find these arguments unpersuasive in view of the Examiner’s rationale articulated from pages 4 through 5 of the Final Rejection (*see e.g.*, Final Act. 5 (“in order to assist buyers in efficiently locating marketplace listings and provide accuracy and completeness of product information supplied by sellers (*see e.g.* paragraphs 0013, 0014)”). Again, Appellant has not filed a Reply Brief or otherwise shown error with persuasive argument or evidence.

In view of the foregoing, we sustain the Examiner’s obviousness rejection of representative independent claim 1, as well as claims 2–7, 10, 11, and 14 grouped therewith.

For similar reasons, and because Appellant relies on the arguments for claim 1 as to the patentability of claims 8, 9, 12, and 13 (*see App. Br. 11*), we also sustain the Examiner’s obviousness rejections of claims 8, 9, 12, and 13 over the same base combination of Yoon, Saltzman, and Bezos.

CONCLUSIONS

(1) Appellant has not shown the Examiner erred in rejecting claims 1–14 under 35 U.S.C. § 101.

(2) Appellant has not shown the Examiner erred in rejecting claims 1–14 under 35 U.S.C. § 103(a).

DECISION

We affirm the Examiner’s decision to reject claims 1–14.

Appeal 2017-010210
Application 13/492,558

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. § 41.50(f).

AFFIRMED