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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/051,670	10/11/2013	Catalin POPESCU	2011-0320US01	5742

74739 7590 09/18/2019

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EXAMINER	
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ART UNIT	PAPER NUMBER
3682	

NOTIFICATION DATE	DELIVERY MODE
09/18/2019	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CATALIN POPESCU, LIN HE, MING LEI, and CHUN TANG

Appeal 2017-010513
Application 14/051,670
Technology Center 3600

Before BIBHU R. MOHANTY, PHILIP J. HOFFMANN, and CYNTHIA L. MURPHY, *Administrative Patent Judges.*

MOHANTY, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

This is a decision on rehearing in Appeal Number 2017-010513. We have jurisdiction under 35 U.S.C. § 6(b).

Requests for Rehearing are limited to matters misapprehended or overlooked by the Board in rendering the original decision, or to responses to a new ground of rejection designated pursuant to § 41.50(b). 37 C.F.R. § 41.52. Appellants may also present a new argument based upon a recent relevant decision of either the Board or a Federal Court. 37 C.F.R. § 41.52 (a)(2).

ANALYSIS

The Appellants argue first that the claims are eligible because they are integrated into a practical application (Request, pages 2–4). Specifically, the Appellants cite to the Specification at paragraphs 9–12 as demonstrating this. The Appellants cite to the Specification at paragraph 12 as stating for example that "in embodiments of the present invention, additional linear regression variables are generated based on the overlapping promotions" (Request, 3).

We have considered but reject this argument. As noted in the Decision mailed May 29, 2019:

> For example, in claim 8 the steps of [1] "receiving" sales history for prior sales periods; [2] "determining" one or more types of overlapping promotions; [3] "creating" a unique overlapping promotion event; [4] "generating" a set of promotion events; and [5] "generating" a lift for each of the promotion events by running a linear regression are merely conventional steps performed by a generic computer that do not improve computer functionality. That is, these recited steps [1]–[5] "do not purport to improve the functioning of the computer itself" but are merely generic functions performed by a conventional processor. Likewise, these same steps [1]–[5] listed above do not improve the technology of the technical field and merely use generic computer components and functions to perform the steps. Also, the recited method steps [1]–[5] above do not require a "particular machine" and can be utilized with a general purpose computer, and the steps performed are purely conventional. In this case the general purpose computer is merely an object on which the method operates in a conventional manner and does not provide "significantly more" to the claim beyond a nominal or insignificant execution of the method. Further, the claim as a whole fails to effect any particular transformation of an article to a different state in a manner that would render the claim "significantly more" than the abstract idea. The recited steps

> [1]–[5] fail to provide meaningful limitations to limit the judicial exception and rather are mere instructions to apply the method to a generic computer. Considering the elements of the claim both individually and as "an ordered combination" the functions performed by the computer system at each step of the process are purely conventional. Each step of the claimed method does no more than require a generic computer to perform a generic computer function.

(Decision 7–8).

Considering the elements of the claim both individually and as "an ordered combination" the functions performed by the computer system at each step of the process are purely conventional. Each step of the claimed method does no more than require a generic computer to perform a generic computer function. Thus, the claimed elements have not been shown to integrate the judicial exception into a practical application. *See* Guidance, 84 Fed. Reg. at 54–55. The Revised Guidance references the MANUAL OF PATENT EXAMINING PROCEDURE ("MPEP") §§ 2106.05(a)–(c) and (e)–(h).

The Appellants secondly argue that no additional evidence was provided to demonstrate that the combination of additional elements are conventional (Request, 4, 5). The Appellants argue that no evidence was provided beyond citing generic hardware components and that no evidence was cited to show the computer functions to be generic (App. Br. 4, 5). The Appellants cite to *Berkheimer v. HP Inc.*, 881 F.3d 1360 (Fed. Cir. Feb. 8, 2018).

We disagree with this contention by the Appellants. We note initially that independent claim 8, which was analyzed in the Decision mailed May 29, 2019, itself contains no recitations to any computer components itself, only method steps which all appear to be readily capable of handled in

a generic manner by a computer in a conventional processing step. The Specification itself at paragraph 14 states that a "general" processor may be used which is indicative of generic computer systems performing conventional functions. The Specification at paragraphs 13–17 describes using conventional computer components in a conventional manner. The Appellants' citation in the Request for Reconsideration to the Specification at paragraphs 9–12 fails to suggest that any computer systems are used in a non-conventional manner as the claimed mathematical performed functions such as linear regressions are often performed on conventional computer systems.

Moreover, the Federal Circuit made clear in *Berkheimer* at 1368 that "not every § 101 determination contains genuine disputes over the underlying facts material to the § 101 inquiry." The Appellants have failed to show that the rejection of record is deficient in this regard by the citations provided in the Request for Reconsideration.

For these reasons the request for rehearing is denied.

CONCLUSION

The Appellants' request for reconsideration has not convinced us that we have not overlooked or misapprehended issues in the previous analysis in light of the arguments presented.

DECISION

REHEARING DENIED