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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte TERRON ROY LINDHOLME,
ROBERT MCCUTCHEN MOORE, and STEVEN PAUL ELY

Appeal 2017-011186
Application 14/579,547
Technology Center 3600

Before ST. JOHN COURTENAY III, JUSTIN BUSCH, and
NORMAN H. BEAMER, *Administrative Patent Judges*.

COURTENAY, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants¹ appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–20, which constitute all the claims pending in this application. We have jurisdiction over the pending claims under 35 U.S.C. § 6(b).

We affirm.

¹ According to Appellants, the real party in interest is Ecredable.com, LLC.
Br. 2.

STATEMENT OF THE CASE

Embodiments of Appellants' invention relate "to a payment verification application, executable in a computing environment, configured to allow consumers to report positive credit transactions to major credit bureaus." Spec. ¶ 13.

Exemplary Claim

1. A non-transitory computer-readable medium embodying program instructions executable in at least one computing device that, when executed by the at least one computing device, cause the at least one computing device to:

access a first web service offered by a first entity and a second web service offered by a second entity over a network to obtain payment history data for a user of a client device, the payment history data comprising at least information associated with a plurality of payments made by the user to the first entity and the second entity, the client device being in data communication with the at least one computing device over the network;

generate a user interface to send to the client device comprising at least the plurality of payments for rendering a display of the client device, wherein the plurality of payments comprise at least a first payment made to the first entity and a second payment made to the second entity;

receive user input comprising a selection of a subset of the plurality of payments, the user input obtained via the user interface rendered in the display of the client device;

authenticate the subset of the plurality of payments to verify each of the plurality of payments in the subset satisfied an obligation owed to the entity by the user by programmatically comparing the payment history data associated with each of the plurality of payments to obligation data associated with the obligation;

generate a reporting document comprising information associated with at least the subset of the plurality of payments authenticated, wherein the reporting document is generated in a

predefined format in accordance with a preference of a credit bureau stored in memory; and

provide a third web service, wherein, in response to an authorized request for the reporting document received from the credit bureau, provide the reporting document to the credit bureau over the third web service.

Br. 28–29 (Claims Appendix) (Contested limitations emphasized).

Rejections

A. Claims 1–20 are rejected under 35 U.S.C. § 101, as being directed to a judicial exception, without significantly more. Final Act. 3–4.

B. Claims 1–20 are rejected under 35 U.S.C. § 103 as being obvious over the combined teachings and suggestions of Nathans et al. (US 2008/0110973 A1; May 15, 2008) (“Nathans”), in view of Coulter (US 2011/0166988 A1; July 7, 2011). Final Act. 5–12.

Issues on Appeal

A. Did the Examiner err in rejecting claims 1–20 under 35 U.S.C. § 101, as being directed to a judicial exception, without significantly more?

B. Did the Examiner err in rejecting claims 1–20 under 35 U.S.C. § 103, as being obvious over the cited combination of Nathans and Coulter?

ANALYSIS

We have considered all of Appellants’ arguments and any evidence presented. We highlight and address specific findings and arguments for emphasis in our analysis below.

Rejection A under 35 U.S.C. § 101

Principles of Law

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

In determining whether a claim falls within an excluded category, we are guided by the Supreme Court’s two-step framework, described in *Mayo* and *Alice*. *Id.* at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–77 (2012)). In accordance with that framework, we first determine what concept the claim is “directed to.” *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 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, 69 (1972)). Concepts determined to be patent eligible include physical and chemical processes, such as “molding rubber products” (*Diamond v. Diehr*, 450 U.S. 175, 192 (1981)); “tanning, dyeing, making waterproof cloth, vulcanizing India

rubber, smelting ores” (*id.* at 184 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.”). Having said that, the Supreme Court also indicated 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 claim is “directed to” an abstract idea, we turn to the second step of the *Alice* and *Mayo* framework, where “we must examine the elements of the claim to determine whether it contains an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Alice*, 573 U.S. at 221 (quotation marks omitted). “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].’” *Id.* (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.*

USPTO January 7, 2019 Revised Section 101 Memorandum

The USPTO recently published revised guidance on the application of § 101. *See* 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) (hereinafter “Memorandum”). *This new guidance is applied in this opinion.* Under the Memorandum, we first look to whether the claim recites:

(1) any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, mental processes, or certain methods of organizing human activity such as a fundamental economic practice or managing personal behavior or relationships or interactions between people); and

(2) additional elements that integrate the judicial exception into a practical application (*see* Manual of Patent Examining Procedure (“MPEP”) §§ 2106.05(a)–(c), (e)–(h)).² Memorandum at 51–52, 55.

A claim that integrates a judicial exception into a practical application applies, relies on, or uses 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. Memorandum at 54. When the judicial exception is so integrated, then the claim is not directed to a judicial exception and is patent eligible under § 101. *Id.*

Only if a claim: (1) recites a judicial exception, and (2) does not integrate that exception into a practical application, do we then evaluate whether the claim provides an inventive concept. Memorandum at 56; *Alice*, 573 U.S. at 217-18. For example, we look to whether the claim:

² All references to the MPEP are to the Ninth Edition, Revision 08–2017 (rev. Jan. 2018).

(3) adds a specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field (*see* MPEP § 2106.05(d)); **or**

(4) simply appends well-understood, routine, and conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception. Memorandum at 56.

Because there is no single definition of an “abstract idea” under *Alice* step 1, the PTO has recently synthesized, for purposes of clarity, predictability, and consistency, key concepts identified by the courts as abstract ideas to explain that the “abstract idea” exception includes the following three groupings:

1. Mathematical concepts—mathematical relationships, mathematical formulas or equations, mathematical calculations;
2. Mental processes—concepts performed in the human mind (including an observation, evaluation, judgment, opinion); and
3. Certain methods of organizing human activity—fundamental economic principles or practices (including hedging, insurance, mitigating risk); commercial or legal interactions (including agreements in the form of contracts; legal obligations; advertising, marketing or sales activities or behaviors; business relations); managing personal behavior or relationships or interactions between people (including social activities, teaching, and following rules or instructions).

According to the Memorandum, “claims that do not recite [subject] matter that falls within these enumerated groupings of abstract ideas should not be treated as reciting abstract ideas,” except in rare circumstances. Even if the claims recite any one of these three groupings of abstract ideas, these claims are still not “directed to” a judicial exception (abstract idea), and thus

are patent eligible, if “the claim as a whole integrates the recited judicial exception into a practical application of that judicial exception.”

Memorandum at 53.

For example, additional limitations that **are** indicative of “integration into a practical application” include:

1. Improvements to the functioning of a computer, or to any other technology or technical field – *see* MPEP § 2106.05(a);
2. Applying the judicial exception with, or by use of, a particular machine – *see* MPEP § 2106.05(b);
3. Effecting a transformation or reduction of a particular article to a different state or thing – *see* MPEP § 2106.05(c); and
4. Applying or using the judicial exception in some other meaningful way beyond generally linking the use of the judicial exception to a particular technological environment, such that the claim as a whole is more than a drafting effort designed to monopolize the exception – *see* MPEP § 2106.05(e).

In contrast, additional limitations that are **not** indicative of “integration into a practical application” include:

5. Adding the words “apply it” (or an equivalent) with the judicial exception, or mere instructions to implement an abstract idea on a computer, or merely uses a computer as a tool to perform an abstract idea – *see* MPEP § 2106.05(f);
6. Adding insignificant extra-solution activity to the judicial exception – *see* MPEP § 2106.05(g); and
7. Generally linking the use of the judicial exception to a particular technological environment or field of use – *see* MPEP 2106.05(h).

See Memorandum at 54–55 (“Prong Two”).

The Examiner's Rejection A under 35 U.S.C. § 101

The Examiner concludes:

Claim(s) 1-20 is/are directed to a method of data gathering, presenting data, generating data, and transmitting data, which is considered an abstract idea. The claim(s) does/do not include additional elements that are sufficient to amount to significantly more than the judicial exception because verifying payment history and sending a payment report to a credit bureau is a *basic economic practice* of reporting payment history to a credit bureau for use in determining a credit score.

Final Act. 3 (emphasis added).³

The Examiner finds the claims do not include additional elements that amount to significantly more than the judicial exception, because:

the *generically-recited* computer elements (e.g., network, user interface of client device, display of client device, web services) *do not add a meaningful limitation* to the underlying abstract idea as the functions/steps/actions taken by the generic computer elements would be routine and conventional in any computer implementation.

Final Act. 3.

For the aforementioned reasons, the Examiner concludes that claims 1–20 are not patent eligible under 35 U.S.C. § 101.

³ “Patent eligibility under § 101 presents an issue of law.” *Accenture Glob. Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1340–41 (Fed. Cir. 2013).

**Under the revised USPTO January 7, 2019 Section 101 policy
Memorandum we consider the following points of law:**

The Judicial Exception

Memorandum (1): Are the claims directed to any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human interactions such as a fundamental economic practice, or mental processes)?

Regarding Memorandum (1), our view is that the Examiner did not err in concluding that each of claims 1–20 on appeal is directed at least to the abstract idea of “verifying payment history and sending a payment report to a credit bureau” which is “a basic economic practice of reporting payment history to a credit bureau for use in determining a credit score.” (Final Act. 3).

Thus, we conclude Appellants’ claims 1–20 are directed to a certain method of organizing human behavior, i.e., a fundamental economic practice. We note claim 1 gathers payment history data, authenticates the data, formats the data into a report format preferred by a credit reporting bureau, and provides the reporting document to the credit bureau over a web service, which reinforces our view that the claims considered as a whole are directed to a method of organizing human activity, i.e., a fundamental economic practice.⁴ To the extent Appellants advance arguments regarding

⁴ Our reviewing court has held that abstract ideas include gathering, analyzing, organizing, and displaying information. *See Electric Power Group*, 830 F.3d at 1354 (finding “gathering and analyzing information of a specified content, then displaying the results,” to be directed to an abstract idea); *Content Extraction and Transmission LLC v. Wells Fargo Bank, Nat. Ass’n.*, 776 F.3d 1343, 1345, 1347 (Fed. Cir. 2014) (finding the “claims

Alice step one, which also fall under Memorandum (2) (covering MPEP §§ 2106.05(a)–(c) and (e)–(h)), we address these arguments *infra*.

Relevant Argued Court Decisions

We do not find persuasive Appellants’ attempt to analogize the claims to the subject claims considered by the court in *McRO, Inc. v. Bandai Namco Games America Inc.*, 837 F.3d 1299 (Fed. Cir. 2016). Br. 14.

We note the subject claim considered by the *McRO* court concerned a method for automatically animating lip synchronization and facial expressions. *McRO*, 837 F.3d at 1303. The *McRO* court concluded the subject claims did not recite an abstract idea because the computer animation *improved* the prior art through the use of *rules*, rather than artists, to set morph weights and transitions between phonemes. *Id.* at 1308. Thus, the claimed invention in *McRO* allowed for computer performance of animation steps that previously had to be performed by human animators. *Id.* at 1309.

generally recite . . . recognizing specific information from the extracted data, and . . . storing that information in a memory” (*id.* at 1345) and that the “claims are drawn to the basic concept of data recognition and storage” (*id.* at 1347)). Also, collecting, analyzing, organizing, and manipulating information has been found to be a collection of abstract ideas. *See Two-Way Media Ltd. v. Comcast Cable Commc’ns, LLC.*, 874 F.3d 1329, 1337–38 (Fed. Cir. 2017) (finding claims directed to the functional results of accumulating, converting, and monitoring records manipulate data “but fail[] to do so in a non-abstract way” (*id.* at 1338)); *Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1341 (Fed. Cir. 2017) (holding that the claimed invention is directed to the abstract idea of “collecting, displaying, and manipulating data of particular documents”); *FairWarning IP, LLC v. Iatric Systems, Inc.*, 839 F.3d 1089, 1093–95 (Fed. Cir. 2016) (finding the claims were directed to a combination of abstract ideas including collecting and analyzing information and utilizing rules to determine fraud).

The subject claims in *McRO* used “limited *rules* in a process specifically designed to achieve an improved technological result” over “existing, manual 3-D animation techniques.” *Id.* at 1316 (emphasis added).

Here, Appellants claimed invention does not apply positively recited *rules, per se*. The invention under appeal merely adapts to a technological setting (e.g., comprising generic computing devices, networks, and/or memory devices) the broad concept of gathering payment history data, authenticating the data, formatting the data into a report format preferred by a credit reporting bureau, and providing the reporting document to the credit bureau over a web service. *See* independent claim 1, and independent claims 4 and 13, which recite similar language of commensurate scope.

Thus, we agree with the Examiner (Final Act. 3) that Appellants’ claims merely implement generic computer components to perform the recited functions that embody the abstract idea. We emphasize that *McRO* (837 F.3d at 1312) also guides that “[t]he abstract idea exception prevents patenting a *result* where ‘it matters not by what process or machinery the result is accomplished.’” (Quoting *O’Reilly v. Morse*, 56 U.S. 62, 113 (1854)). (Emphasis added).

Regarding Appellants’ further arguments analogizing the claims before us on appeal to the subject claim in *Enfish* (Br. 14–16), we note the *Enfish* court concluded “the claims at issue in this appeal are not directed to an abstract idea within the meaning of *Alice*. Rather, they are directed to a *specific improvement to the way computers operate*, embodied in the self-referential table.” *Enfish*, 822 F.3d at 1336 (emphasis added).

Thus, the *Enfish* court concluded the self-referential logical table was a specific type of data structure designed to *improve the way a computer*

stores and retrieves data in memory. Id. at 1339. Because the analysis stops if there is no abstract idea under *Alice* step 1, the *Enfish* court concluded the subject claims were patent eligible. *Id.*

Here, Appellants have not persuasively shown that any features of the claimed invention *improve* the way the recited generic computer components store and retrieve data in a manner analogous to that found by the court in *Enfish*. Moreover, Appellants' claims 1–20 are silent regarding any mention of a database, much less a self-referential database table similar to the specific type of logical table arrangement the *Enfish* court found was designed to improve the way a computer stores and retrieves data in memory. *See Enfish*, 822 F.3d at 1336.

Therefore, we are not persuaded that Appellants' claimed invention improves the functionality or efficiency of the recited generic computer and network components, or otherwise changes the way the components function, at least in the sense contemplated by the Federal Circuit in *Enfish*.

Integration of the Judicial Exception into a Practical Application

Regarding Memorandum (2), and for the reasons which follow, we conclude that Appellants' claims 1–20 do not integrate the judicial exception into **a practical application**. *See* MPEP §§ 2106.05(a)–(c) and (e)–(h). Applying the revised 101 Memorandum guidance, we address these “practical application” MPEP sections seriatim.

MPEP § 2106.05(a) “Improvements to the Functioning of a Computer or To Any Other Technology or Technical Field” [R-08.2017]

This section of the MPEP guides: In determining patent eligibility, examiners should consider whether the claim “purport(s) to improve the functioning of the computer itself” or “any other technology or technical field . . . While improvements were evaluated in *Alice Corp* as relevant to the search for an inventive concept (Step 2B), several decisions of the Federal Circuit have also evaluated this consideration when determining whether a claim was directed to an abstract idea (Step 2A).”

The MPEP instructs: “Thus, an examiner may evaluate whether a claim contains an improvement to the functioning of a computer or to any other technology or technical field **at Step 2A or Step 2B**, as well as when considering whether the claim has such self-evident eligibility that it qualifies for the streamlined analysis.” MPEP § 2106.05(a) (emphasis added).

Here, we consider the question of whether the claims are directed to a *specific improvement* in the capabilities of the computing devices, or, instead, “a process that qualifies as an ‘abstract idea’ for which computers are invoked merely as a tool.” *Enfish*, 822 F.3d at 1336.

Appellants recite the language of claim 1 (Br. 17–18), and urge:

Thus, claim 1 and the supporting disclosure fully supports the finding that claim 1, which describes providing a web service for an individual user to programmatically coalesce, authenticate, and verify payments selected by the individual for programmatic transmission and reporting, results in an improvement in computational efficiency as data collected by a credit bureau is coalesced, organized, and received programmatically through the web service, as well as *functions differently* than conventional approaches (e.g., manual credit reporting and manual credit

review). As such, the analysis in *Enfish* can be applied to the facts in this case to arrive at the same conclusion as in *Enfish*, particularly that the claimed invention is not directed to an abstract idea because the allocation of products *functions differently* in this case as compared to conventional approaches.

Br. 18–19.

We disagree with Appellants, because we find no language recited in claim 1 (or claims 2–20) that specifically improves the generic computer device, network, or memory. We have addressed *supra* why we conclude the guidance of *Enfish* is inapplicable to the claims before us on appeal.

Appellants further contend:

in the context of the *McRO* decision, the November 2016 *Memorandum* recognized that an “‘improvement in computer-related technology’ is not limited to improvements in the operation of a computer or a computer network *per se*, but may also be claimed as a set of ‘rules’ (basically mathematical relationships) that improve computer-related technology.” November 2016 *Memorandum* at p. 2. Thus, the Office Action is incorrect to conclude that the claimed invention must, for some reason, recite “improvements to ‘technology.’” Office Action at p. 16.

Br. 21–22 (emphasis added).

We have addressed *supra* why we conclude *McRO* is inapplicable to the claims before us on appeal. In reviewing the record, we find the claims on appeal are *silent* regarding specific limitations directed to an *improved* computer system, processor, memory, network, database, or Internet. Therefore, we find Appellants’ claimed invention does not provide a solution “necessarily rooted in *computer technology* in order to overcome a problem specifically arising in the realm of computer networks,” such as considered by the court in *DDR Holdings LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1257 (Fed. Cir. 2014) (emphasis added).

Further regarding the use of the recited generic computer, processor(s) and database, the Supreme Court has held “the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention.” *Alice*, 134 S. Ct. at 2358. Our reviewing court provides additional guidance: *See FairWarning*, 839 F.3d at 1096 (“[T]he use of generic computer elements like a microprocessor or user interface do not alone transform an otherwise abstract idea into patent-eligible subject matter.”); *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015) (claims reciting, *inter alia*, sending messages over a network, gathering statistics, using a computerized system to automatically determine an estimated outcome, and presenting offers to potential customers found to merely recite “well-understood, routine conventional activities” by either requiring conventional computer activities or routine data-gathering steps (internal citation omitted)); *see also Elec. Power Grp.*, 830 F.3d at 1355 (“We have 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.” (quoting *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1353, 1355 (Fed. Cir. 2014))); *Intellectual Ventures I LLC*, 850 F.3d at 1341 (“Rather, the claims recite both a generic computer element—a processor—and a series of generic computer ‘components’ that merely restate their individual functions That is to say, they merely describe the functions of the abstract idea itself, without particularity. This is simply not enough under step two.”).

*MPEP § 2106.05(b) Particular Machine [R-08.2017], and
MPEP § 2106.05(c) Particular Transformation [R-08.2017]*

At the outset, we note that the machine-or-transformation test is only applicable to method (process) claims 13–20 on appeal.

Section 2106.05(c) of the MPEP guides: “Another consideration when determining whether a claim recites significantly more is whether the claim effects a transformation or reduction of a particular article to a different state or thing.” “[T]ransformation and reduction of an article ‘to a different state or thing’ is the clue to patentability of a process claim that does not include particular machines.” *Bilski v. Kappos*, 561 U.S. 593, 658 (2010) (quoting *Gottschalk v. Benson*, 409 U.S. 63, 70, 175 (1972)). If such a transformation exists, the claims are likely to be significantly more than any recited judicial exception. *Bilski* emphasizes that although the transformation of an *article* is an important clue, it is not a stand-alone test for eligibility. MPEP § 2106.05(c).

Regarding Memorandum (2), we note Appellants advance no arguments in the Briefs that are directed to the *Bilski* machine-or-transformation test, which would only be applicable to the method (process) claims on appeal.

To the extent Appellants may contend that claim 1 transforms data by generating the reporting document in “a predefined format in accordance with a preference of a credit bureau stored in memory” (Claim 1), our reviewing court guides that “[t]he mere manipulation or reorganization of *data*, however, does not satisfy the transformation prong.” *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1375 (Fed. Cir. 2011) (emphasis added). Therefore, we conclude method claim 1 fails to satisfy

the transformation prong of the *Bilski* machine-or-transformation test. *See* MPEP § 2106.05(c) “Particular Transformation.”

Nor do Appellants argue that the method claims on appeal are tied to a particular machine. *See* MPEP § 2106.05(b) “Particular Machine.”

Arguments not made are waived. *See* 37 C.F.R. § 41.37(c)(1)(iv).

MPEP § 2106.05(e) Other Meaningful Limitations [R-08.2017]

This section of the MPEP guides:

Diamond v. Diehr provides an example of a claim that recited meaningful limitations beyond generally linking the use of the judicial exception to a particular technological environment. 450 U.S. 175, 209 USPQ 1 (1981). In *Diehr*, the claim was directed to the use of the Arrhenius equation (an abstract idea or law of nature) in an automated process for operating a rubber-molding press. 450 U.S. at 177-78, 209 USPQ at 4. The Court evaluated additional elements such as the steps of installing rubber in a press, closing the mold, constantly measuring the temperature in the mold, and automatically opening the press at the proper time, and found them to be meaningful because they sufficiently limited the use of the mathematical equation to the practical application of molding rubber products. 450 U.S. at 184, 187, 209 USPQ at 7, 8. In contrast, the claims in *Alice Corp. v. CLS Bank International* did not meaningfully limit the abstract idea of mitigating settlement risk. 573 U.S. ___, 134 S. Ct. 2347, 110 USPQ2d 1976 (2014). In particular, the Court concluded that the additional elements such as the data processing system and communications controllers recited in the system claims did not meaningfully limit the abstract idea because they merely linked the use of the abstract idea to a particular technological environment (i.e., “implementation via computers”) or were well-understood, routine, conventional activity.

MPEP § 2106.05(e).

Applying this reasoning here, and for essentially the same reasons set forth by the Examiner (Ans. 3), we conclude Appellants’ claims do not add

meaningful limitations beyond generally linking the use of the judicial exception to a particular technological environment. Thus, we agree with the Examiner’s legal conclusion “the *generically-recited* computer elements (e.g., network, user interface of client device, display of client device, web services) *do not add a meaningful limitation* to the underlying abstract idea.” Final Act. 3 (emphasis added).

MPEP §2106.05(f) Mere Instructions To Apply An Exception [R-08.2017]

For the reasons discussed above, we conclude Appellants’ claims invoke generic computer components merely as a tool in which the *computer instructions* apply the judicial exception, which we conclude is a certain method of organizing human behavior, i.e., a fundamental economic practice “because verifying payment history and sending a payment report to a credit bureau is a basic economic practice,” as correctly concluded by the Examiner. Final Act. 3.

MPEP § 2106.05(g) Insignificant Extra-Solution Activity [R-08.2017]

We conclude that *obtaining payment history* data, authenticating the data, formatting the data (into a report format preferred by a credit reporting bureau), and providing the reporting document to the credit bureau over a web service (claim 1) begins with a step of data gathering. Data gathering, as performed by the steps or function in Appellants’ claims, is a classic example of insignificant extra-solution activity. *See, e.g., In re Bilski*, 545 F.3d 943, 963 (Fed. Cir. 2008) (en banc), *aff’d sub nom, Bilski v. Kappos*, 561 U.S. 593 (2010).

The Supreme Court guides that the “prohibition against patenting abstract ideas ‘cannot be circumvented by attempting to limit the use of the formula to a particular technological environment’ or [by] adding ‘insignificant postsolution activity.’” *Bilski*, 561 U.S. at 610–11 (quoting *Diehr*, 450 U.S. at 191–92). On this record, we are of the view that Appellants’ claims do not operate the recited generic computer components in a manner to achieve an improvement in computer functionality.

MPEP § 2106.05(h) Field of Use and Technological Environment [R-08.2017]

“[T]he Supreme Court has stated that, even if a claim does not wholly preempt an abstract idea, it still will not be limited meaningfully if it contains only insignificant or token pre- or post-solution activity—such as *identifying a relevant audience, a category of use, field of use, or technological environment.*” *Ultramercial Inc. v. Hulu LLC*, 722 F.3d 1335, 1346 (Fed. Cir. 2013) (citations omitted) (emphasis added).

Appellants contend:

the Office Action does not even consider the lack of the preemption of the alleged abstract idea. The “*absence of preemption*” in this instance can lead to a finding that “the claimed invention is not directed to a judicial exception.” *Id.* at p. 3. In this case, the record demonstrates that the alleged abstract idea of “reporting payment history to a credit bureau for use in determining a credit score” can be performed in any number of ways (*i.e., claim 1 does not pre-empt all ways*) besides those recited in claim 1. Indeed, “reporting payment history to a credit bureau for use in determining a credit score,” such as those shown in *Nathans* and *Coulter*, each of which describes *significantly less* than the claimed invention.

Br. 22 (emphasis added).

In response, the Examiner further explains the basis for the rejection:

The use of a user to select a subset of the gathered data for authentication fails to define the scope of the claims beyond the basic collection and comparison. How the payment history data is collected and authenticated is only defined in the broadest terms using generic computers. As such, the applicant seeks to *preempt the field* by claiming generic gathering of payment history data and authenticating the payments by programmatically comparing payment history data to obligation data.

Ans. 15 (emphasis added).

Our reviewing court provides applicable guidance: “[Q]uestions on preemption are inherent in and resolved by the § 101 analysis,” and, although “preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015); *cf. OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015) (“[T]hat the claims do not preempt all price optimization or may be limited to price optimization in the e-commerce setting do not make them any less abstract.”).

For the reasons discussed above, we conclude Appellants’ **claims do not include additional elements that integrate the judicial exception into a practical application** (*see* MPEP §§ 2106.05(a)–(c), (e)–(h), as discussed above).

The Inventive Concept

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:

Memorandum (3), adds a specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field (*see* MPEP § 2106.05(d)); **or**

Memorandum (4), simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.

Here, the Examiner has provided in the record a list of computer functions and a corresponding list of case authorities to support the findings that the listed computer functions are well-understood, routine, and conventional (WURC) functions. *See* Ans. 16. We note the Examiner’s Final Action (July 1, 2016) was mailed well before *Berkheimer v. HP Inc.* (881 F.3d 1360 (Fed. Cir. 2018)) was decided on February 8, 2018.

Nevertheless, we find the Examiner presciently provided factual evidence that sufficiently complies with the USPTO April 19, 2018 *Berkheimer* Memorandum, entitled “Changes in Examination Procedure Pertaining to Subject Matter Eligibility, Recent Subject Matter Eligibility Decision (*Berkheimer v. HP, Inc.*)” (hereinafter “*Berkheimer* Memorandum”). *See Berkheimer* Memorandum, fact type 2: “A citation to one or more of the court decisions discussed in MPEP § 2106.05(d)(II) as noting the well-understood, routine, conventional nature of the additional element(s).” *Berkheimer* Memorandum 4.

We note the Examiner refers to the Examiner training guidance: “July 2015 Update: Subject Matter Eligibility.” Ans. 16. In particular, footnotes 20–25 refer to the particular case authorities cited in the July 2015 training material. *See* Ans. 16.

In reviewing the record, we recognize that Appellants have not had the opportunity to argue *Berkheimer*, which was decided by the Federal Circuit on February 8, 2018. Because *Berkheimer* (881 F.3d at 1369) and the USPTO *Berkheimer* Memorandum are intervening authorities, Appellants will be permitted to argue any new issues related to *Berkheimer* in a Request for Rehearing, under our procedural rule. *See* 37 C.F.R. § 41.52(a)(2) (“Appellant may present a new argument based upon a recent relevant decision of either the Board or a Federal Court.”).

However, on the record before us, Appellants have not shown that the claims on appeal add a specific limitation beyond the judicial exception that is not “well-understood, routine, and conventional” in the field (see MPEP § 2106.05(d)). Nor have Appellants filed a Reply Brief to rebut the Examiner’s responsive explanations and findings in the Answer.

In light of the foregoing, we conclude, under the USPTO Revised 101 Guidance (Memorandum), that each of Appellants’ claims 1–20, considered as a whole, is directed to a *patent-ineligible abstract idea* that is not integrated into a practical application.

Accordingly, for the reasons discussed above, we sustain the Examiner’s rejection A under 35 U.S.C. § 101 of claims 1–20.⁵

⁵ To the extent Appellants have not advanced separate, substantive arguments for particular claims, or other issues, such arguments are waived. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Rejection B under 35 U.S.C. § 103(a)

GROUPING OF CLAIMS

Based upon Appellants' arguments (Br. 23–26) and our discretion under 37 C.F.R. § 41.37(c)(1)(iv), we decide the appeal of obviousness Rejection B of claims 1–20 on the basis of representative claim 1.

Rejection B of Independent Claim 1 under 35 U.S.C. § 103(a)

Issues: Under 35 U.S.C. § 103(a), did the Examiner err by finding the cited combination of Nathans and Coulter would have taught or suggested the contested limitation:

authenticate the subset of the plurality of payments to verify each of the plurality of payments in the subset satisfied an obligation owed to the entity by the user by programmatically comparing the payment history data associated with each of the plurality of payments to obligation data associated with the obligation[,]

within the meaning of representative claim 1?⁶ (emphasis added).

⁶ We give the contested claim limitations the broadest reasonable interpretation (“BRI”) consistent with the Specification. *See In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997); *see, e.g.,* Spec. ¶ 78 (“It should be emphasized that the above-described embodiments of the present disclosure are merely possible examples of implementations set forth for a clear understanding of the principles of the disclosure. Many variations and modifications may be made to the above-described embodiment(s) without departing substantially from the spirit and principles of the disclosure. *All such modifications and variations are intended to be included herein within the scope of this disclosure and protected by the following claims.*”) (emphasis added).

We have reviewed Appellants' arguments in the Appeal Brief, the Examiner's obviousness rejections, and the Examiner's response to Appellants' arguments. Appellants do not proffer sufficient argument or evidence for us to find error in the Examiner's findings. *See Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential). For at least the reasons discussed below, we agree with and adopt the Examiner's underlying factual findings and legal conclusions of obviousness, as set forth in the Final Action (5–9) and Answer (17–18).

The Examiner finds Nathans, paragraphs 32–34, as modified by the cited features of Coulter, teaches or suggests the contested limitation of claim 1. *See* Final Act. 6–7. Turning to the evidence, Nathans describes verification, which we find teaches or suggests the claimed authorization:

An indication of whether or not the payments have been *verified* is received from the *verifier* at step **216**. In some embodiments, the *verification* is performed through contact with the payee. In other embodiments, the *verification* is performed only using paper documentation. If the indication from the *verifier* indicates that the payments have not been *verified* at step **218**, the payment data repository terminal **120** transmits a message indicating the same to the user at step **219** and the process ends.

Nathans ¶ 33 (emphasis added).

However, Appellants disagree with the Examiner's findings:

To allegedly verify a payment, *Nathans* states that a “request along with any supporting documentation received from the user is then transmitted to a verifier via the verifier terminal 130 at step 212. In some embodiments, the verifier must be a member of the NCRA or be supervised by such a member, or an FCRA-certified specialist.” *Id.* at [0032]. As such, *Nathans* discusses using *a manual verification* of a payment, for example, “through contact with the payee” or “only using paper documentation.” *Nathans* does not show or suggest, however, “programmatically

comparing payment data associated with each of the plurality of payments to obligation data associated with the obligation,” as recited in claim 1.

Br. 25 (emphasis added).

In response, the Examiner relies on paragraphs 112, 109, 123, 128, 133–34, and 141 of Coulter to teach or suggest the claimed authentication by “programmatically comparing the payment history data associated with each of the plurality of payments to obligation data associated with the obligation.” Claim 1. *See* Final Act. 7–8.

Strongly supporting the Examiner’s findings, we note Coulter particularly describes:

System provider **102** after receiving a dispute (or a request to correct credit information) from a user, and if allowed by creditor **114A**, accesses the creditor **114A** database directly. Creditor **114A** stored data is analyzed and *compared* with the user data/request. *Based on the analysis*, system provider **102** concludes *whether the stored data should be corrected or the stored data is accurate*. System provider **102** notifies both the creditor **114A** and user **104** when data needs to be changed and/or if data is accurate (i.e., a particular loan instrument is valid).

Coulter ¶ 134 (emphasis added).

See also Coulter ¶ 141 (describing system provider 102): “FIG. 4B shows a block diagram of the system provider 102 used in the system 100 of FIG. 4A. The system provider 102 comprises a user interface 130 (or a receiving module), a processing module 140, and a communication module 150.”

We emphasize that the Examiner’s ultimate legal conclusion of obviousness is based upon the *combined* teachings of the cited references. Moreover, “the question under 35 USC 103 is not merely what the references expressly teach but what they would have *suggested* to one of ordinary skill in the art at the time the invention was made.” *Merck & Co. v. Biocraft Labs., Inc.*, 874 F.2d 804, 807 (Fed. Cir. 1989) (quoting *In re Lamberti*, 545 F.2d 747, 750 (CCPA 1976)). (Emphasis added); *see also* MPEP § 2123.

On this record, we find a preponderance of the evidence supports the Examiner’s underlying factual findings and ultimate legal conclusion of obviousness regarding the contested *authentication* function or step, because we find the payment information verification, as described in at least paragraph 33 of Nathans, in combination with the cited paragraphs of Coulter (*see* Final Act. 7–9), teaches or suggests the contested function or step of authentication. *See* Representative claim 1.

For at least the aforementioned reasons, we are not persuaded the Examiner erred regarding the contested limitation of representative claim 1, as rejected under rejection B. We additionally note that Appellants have not filed a Reply Brief to rebut the Examiner’s responsive explanations and findings in the Answer.

Accordingly, we sustain the Examiner’s obviousness Rejection B of claim 1, and Rejection B of grouped claims 2–20, not argued separately. *See supra*, “GROUPING OF CLAIMS.”

CONCLUSIONS

The Examiner did not err in rejecting claims 1–20 under 35 U.S.C. § 101, as being directed to a judicial exception, without significantly more.

The Examiner did not err in rejecting claims 1–20 under 35 U.S.C. § 103, as being obvious over the cited combination of Nathans and Coulter.

DECISION

We affirm the Examiner’s decision rejecting claims 1–20 under 35 U.S.C. § 101.

We affirm the Examiner’s decision rejecting claims 1–20 under 35 U.S.C. § 103.

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). *See* 37 C.F.R. § 41.50(f).

AFFIRMED