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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* JESSE H. DAVIS and JOHN. J. BACKOF II

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Appeal 2018-000403  
Application 14/338,320  
Technology Center 2800

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Before JOHN A. EVANS, NORMAN H. BEAMER, and JASON M. REPKO, *Administrative Patent Judges*.

EVANS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant<sup>1</sup> seeks our review under 35 U.S.C. § 134(a) of the Examiner’s final rejection of Claims 22–24. App. Br. 12–13 (Claims App’x.). Claims 1–21 are canceled. App. Br. 12. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.<sup>2</sup>

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<sup>1</sup> We use the word “Appellant” to refer to “Applicant” as defined in 37 C.F.R. § 1.42. Appellant states the real party in interest is Creative Mobile Technologies, LLC. App. Br. 1.

<sup>2</sup> Rather than reiterate the arguments of Appellants and the Examiner, we refer to the Appeal Brief (filed June 6, 2017, “App. Br.”), the Reply Brief

STATEMENT OF THE CASE

The claims relate to a system and method for processing credit card transactions. *See* Abstract.

*Invention*

Claims 22 and 23 are independent. App. Br. 12. An understanding of the invention can be derived from a reading of Claim 22, which is reproduced in Table 1.

*References and Rejections*<sup>3</sup>

Albert	US 5,991,410	Nov 23, 1999
Taylor	US 2005/0165683 A1	July 28, 2005
Saunders	US 2006/0278704 A1	Dec. 14, 2006
Stambaugh	US 7,353,208 B1	Apr. 1, 2008

1. Claims 22–24 stand rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more. Final Act. 2–6.
2. Claim 22 stands rejected under 35 U.S.C. § 103 as being unpatentable over Albert, Stambaugh, Taylor, and Saunders. Final Act. 7–11.

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(filed October 13, 2017), the Examiner’s Answer (mailed August 23, 2017, “Ans.”), the Final Action (mailed January 18, 2017, “Final Act.”), and the Specification (filed July 22, 2014, “Spec.”) for their respective details.

<sup>3</sup> The present application was examined under the pre-AIA first inventor provisions. Final Act. 2.

3. Claims 23 and 24 stand rejected under 35 U.S.C. § 103 as being unpatentable over Albert, and Stambaugh. Final Act. 12–14.

### ANALYSIS

We have reviewed the rejections of Claims 22–24 in light of Appellant’s arguments that the Examiner erred. We have considered in this Decision only those arguments Appellant actually raised in the Brief. Any other arguments which Appellant could have made but chose not to make in the Brief are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv). We are not persuaded that Appellant identifies reversible error. We provide the following explanation to highlight and address specific arguments and findings primarily for emphasis. We consider Appellant’s arguments as they are presented in the Appeal Brief, pages 3–10.

#### CLAIMS 22–24: INELIGIBLE SUBJECT MATTER

Appellant argues these claims as a group in view of the recitations of Claim 22. App. Br. 10. Therefore, we decide the appeal of the § 101 rejection on the basis of representative Claim 22 and refer to the rejected claims collectively herein as “the claims.” *See* 37 C.F.R. § 41.37(c)(1)(iv); *In re King*, 801 F.2d 1324, 1325 (Fed. Cir. 1986). We review the record *de novo*. *SiRF Tech., Inc. v. Int’l Trade Comm’n*, 601 F.3d 1319, 1331 (Fed. Cir. 2010) (“Whether a claim is drawn to patent-eligible subject matter is an issue of law that we review *de novo*.”). Based upon our review of the record in light of recent policy guidance with respect to patent-eligible

subject matter rejections under 35 U.S.C. § 101, we sustain the rejection of Claims 22–24 for the specific reasons discussed below.

*Preemption.*

Appellant denies the claims are directed to an abstract idea, but contends the claims in no way preempt application thereof. App. Br. 4–6.

Although preemption may denote patent ineligibility, its absence does not demonstrate patent eligibility. See *FairWarning, IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1098 (Fed. Cir. 2016). For claims covering a patent-ineligible concept, preemption concerns “are fully addressed and made moot” by an analysis under the *Mayo/Alice* framework. *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015). We conduct such an analysis below.

A. 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.<sup>4</sup> The Examiner finds the claims are directed to statutory categories. Final Act. 6. 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. *Mayo Collaborative Services v. Prometheus Labs., Inc.*, 566 U.S. 66, 70 (2012) (citing *Diamond v. Diehr*, 450 U.S. 175, 185 (1981)).

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<sup>4</sup> This threshold analysis of whether a claim is directed to one of the four statutory categories of invention, i.e., a process, machine, manufacture, or composition of matter, is referred to as “*Step 1*” in the patent-eligibility inquiry under 35 U.S.C. § 101.

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*. *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 217–18 (2014) (citing *Mayo*, 566 U.S. at 75–77). 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; *see also 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” (*Diehr*, 450 U.S. at 191); “tanning, dyeing, making water-proof cloth, vulcanizing India rubber, smelting ores” (*id.* at 182 n.7 (quoting *Corning v. Burden*, 56 U.S. (15 How.) 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 “a claim drawn to subject matter otherwise statutory does not become nonstatutory simply because it uses a mathematical formula.” *Diehr*, 450 U.S. at 187, 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.* at 191 (citing *Benson and Flook*), 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.”).

Abstract ideas may include, but are not limited to, fundamental economic practices, methods of organizing human activities, and mathematical formulas or relationships. *Alice*, 573 U.S. at 217–21. Under this guidance, we must therefore ensure at step one that we articulate what the claims are directed to with enough specificity to ensure the step one inquiry is meaningful. *Id.* at 217 (“[W]e tread carefully in construing this exclusionary principle lest it swallow all of patent law.”).

B. United States Patent and Trademark Office Revised Guidance.<sup>5</sup>

The USPTO recently published revised guidance in the Federal Register concerning the application of § 101.

Under the Revised Guidance, we first look to whether the claim recites:

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<sup>5</sup> 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (January 7, 2019) (hereinafter “Revised Guidance,” or “Rev. Guid.”) (<https://www.govinfo.gov/content/pkg/FR-2019-01-07/pdf/2018-28282.pdf>).

(1) any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human activity such as a fundamental economic practice, or mental processes);<sup>6</sup> and

(2) additional elements that integrate the judicial exception into a practical application (*see* Manual for Patent Examining Procedure (“MPEP”) §§ 2106.05(a)–(c), (e)–(h)).<sup>7</sup>

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 are not “well-understood, routine, conventional” in the field (*see* MPEP § 2106.05(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.<sup>8</sup>

*See* Revised Guidance.

*Step 2A(i) — Abstract Idea*

The Revised Guidance extracts and synthesizes key concepts identified by courts as abstract ideas to explain that the abstract idea

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<sup>6</sup> Referred to as “*Revised Step 2A, Prong 1*” in the Revised Guidance (hereinafter “*Step 2A(i)*”).

<sup>7</sup> Referred to as “*Revised Step 2A, Prong 2*” in the Revised Guidance (hereinafter “*Step 2A(ii)*”).

<sup>8</sup> Items (3) and (4) continue to be collectively referred to as “*Step 2B*” of the Supreme Court’s two-step framework, described in *Mayo* and *Alice*.

exception includes the following groupings of subject matter, when recited as such in a claim limitation:

(a) Mathematical concepts—mathematical relationships, mathematical formulas or equations, mathematical calculations;

(b) 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); and

(c) Mental processes—concepts performed in the human mind (including an observation, evaluation, judgment, opinion).

Under the Revised Guidance, if the claim does not recite a judicial exception (a law of nature, natural phenomenon, or subject matter within the enumerated groupings of abstract ideas above), then the claim is patent-eligible at *Step 2A(i)*. This determination concludes the eligibility analysis, except in rare situations identified in the Revised Guidance.<sup>9</sup> However, if the claim recites a judicial exception (i.e., an abstract idea enumerated above, a law of nature, or a natural phenomenon), the claim requires further

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<sup>9</sup> In the rare circumstance in which an Examiner believes a claim limitation that does not fall within the enumerated groupings of abstract ideas should nonetheless be treated as reciting an abstract idea, the procedure described in of the Guidance for analyzing the claim should be followed. *See* Guidance, Section III.C.

analysis for a practical application of the judicial exception in *Step 2A(ii)*.

*Step 2A(ii) — Practical Application*

If a claim recites a judicial exception in *Step 2A(i)*, we determine whether the recited judicial exception is integrated into a practical application of that exception in *Step 2A(ii)* by: (a) identifying whether there are any additional elements recited in the claim beyond the judicial exception(s); and (b) evaluating those additional elements individually and in combination to determine whether they integrate the exception into a practical application.

The seven identified “practical application” sections of the MPEP,<sup>10</sup> cited in the Revised Guidance under *Step 2A(ii)*, are:

- (1) MPEP § 2106.05(a) Improvements to the Functioning of a Computer or To Any Other Technology or Technical Field
- (2) MPEP § 2106.05(b) Particular Machine
- (3) MPEP § 2106.05(c) Particular Transformation
- (4) MPEP § 2106.05(e) Other Meaningful Limitations
- (5) MPEP § 2106.05(f) Mere Instructions To Apply An Exception
- (6) MPEP § 2106.05(g) Insignificant Extra-Solution Activity
- (7) MPEP § 2106.05(h) Field of Use and Technological Environment

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<sup>10</sup> See MPEP § 2106.05(a)–(c), (e)–(h). Citations to the MPEP herein refer to revision [R-08.2017].

If the recited judicial exception is integrated into a practical application as determined under one or more of the MPEP sections cited above, then the claim is not directed to the judicial exception, and the patent-eligibility inquiry ends. If not, then analysis proceeds to *Step 2B*.

*Step 2B — “Inventive Concept” or “Significantly More”*

It is possible that a claim that does not “integrate” a recited judicial exception under *Step 2A(ii)* is nonetheless patent eligible. For example, the claim may recite additional elements that render the claim patent eligible even though a judicial exception is recited in a separate claim element.<sup>11</sup> The Federal Circuit has held claims eligible at the second step of the *Alice/Mayo* test (USPTO *Step 2B*) because the additional elements recited in the claims provided “significantly more” than the recited judicial exception (e.g., because the additional elements were unconventional in combination).<sup>12</sup> Therefore, if a claim has been determined to be directed to a judicial exception under *Revised Step 2A*, we must 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).<sup>13</sup>

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<sup>11</sup> See, e.g., *Diehr*, 450 U.S. at 187.

<sup>12</sup> See, e.g., *Amdocs (Israel), Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1300, 1304 (Fed. Cir. 2016); *BASCOM Global Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1349–52 (Fed. Cir. 2016); *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1257–59 (Fed. Cir. 2014).

<sup>13</sup> 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

Under the Revised Guidance, we must consider in *Step 2B* whether an additional element or combination of elements: (1) “Adds a specific limitation or combination of limitations that are not well-understood, routine, conventional activity in the field, which is indicative that an inventive concept may be present;” or (2) “simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception, which is indicative that an inventive concept may not be present.” *See* Revised Guidance, III.B.

In the *Step 2B* analysis, an additional element (or combination of elements) is not well-understood, routine or conventional unless the examiner finds an evidentiary basis, and expressly supports a rejection in writing with, one or more of the following:

1. A citation to an express statement in the specification or to a statement made by an applicant during prosecution that demonstrates the well-understood, routine, conventional nature of the additional element(s). . . .
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).
3. A citation to a publication that demonstrates the well-understood, routine, conventional nature of the additional element(s)  
. . . .
4. A statement that the examiner is taking official notice of the well-understood, routine, conventional nature of

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skilled artisan in the relevant field is a question of fact.” *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1368 (Fed. Cir. 2018).

the additional element(s)

*See Berkheimer Memo.*

If the Examiner or the Board determines under *Step 2B* that the element (or combination of elements) amounts to significantly more than the exception itself, the claim is eligible, thereby concluding the eligibility analysis.

However, if a determination is made that the element and combination of elements does not amount to significantly more than the exception itself, the claim is ineligible under *Step 2B*, and the claim should be rejected for lack of subject matter eligibility.

C. Analysis.

*Step 1*

The independent claims recite variously systems and methods, thus, recite enumerated categories of eligible subject matter. Therefore, the issue before us is whether the claims are directed to a judicial exception without significantly more. Based upon our review of the record in light of the Revised Guidance with respect to patent-eligible subject matter rejections under 35 U.S.C. § 101, we affirm the rejection of Claims 22–24.

*Step 2A(i): Does the Claim Recite a Judicial Exception?*

The preamble of independent Claim 22 recites: “A system for processing credit card transactions for a plurality of vehicles of a fleet of motor vehicles, comprising.” The limitations recited in the body of the claim are analyzed in Table I against the categories of abstract ideas as set forth in the Revised Guidance.

<b>Claim 22</b>	<b>Revised Guidance, p. 52</b>
<p>[a]<sup>14</sup> a control center configured to maintain simultaneous wireless connections with a plurality of the vehicles in the fleet to facilitate transmission and reception of a plurality of credit card transactions from at least one vehicle of the plurality of vehicles;</p>	<p>Certain methods of organizing human activity, i.e., marketing activities and business relations. Rev. Guid. 52.</p>
<p>[b] a driver interactive unit (DIU) located in each vehicle and accessible to a driver of the vehicle, the DIU in wireless communication with the control center;</p>	<p>A machine, not included within abstract ideas category.</p>
<p>[c] a passenger information monitor (PIM) located in each vehicle, the PIM in communication with the DIU and including a touch screen display facing a passenger in the vehicle so as to be accessible to the passenger;</p>	<p>A machine, not included within abstract ideas category.</p>
<p>[d] a charging meter located in each vehicle that determines charge amounts corresponding to the respective credit card transaction;</p>	<p>A machine, not included within abstract ideas category.</p>
<p>[e] a payment card reader located in each vehicle operatively coupled to the PIM and configured to receive payment from the passenger when the PIM provides a prompts to the</p>	<p>A machine, not included within abstract ideas category.</p>

<sup>14</sup> Step designators, e.g., “[a]” were added to facilitate discussion.

passenger and provides a visual display of the charge amounts determined by the charging meter;	
[f] the control center receiving the plurality of credit card transactions from the DIU or the PIM of the at least one vehicle, each credit card transaction containing credit card information, including the charge amount corresponding to each credit card transaction;	Certain methods of organizing human activity, i.e., marketing activities and business relations. Rev. Guid. 52. <sup>15</sup>
[g] the control center aggregating the credit card transaction information transmitted by the DIU or PIM of the at least one vehicle;	Certain methods of organizing human activity, i.e., marketing activities and business relations. Rev. Guid. 52.
[h] the control center assigning merchant information to the credit card transaction information, the merchant information including information about a driver, a vehicle, a group of vehicles, or a fleet of vehicles that corresponds to the credit card transaction information; and	Certain methods of organizing human activity, i.e., marketing activities and business relations. Rev. Guid. 52.
[i] the control center and only the control center controlling	Certain methods of organizing human activity, i.e., marketing

<sup>15</sup> *Alice*, 573 U.S. at 219–20 (concluding that use of a third party to mediate settlement risk is a “fundamental economic practice” and thus an abstract idea); *Bed Bath & Beyond, Inc.*, 876 F.3d 1372, 1378–79 (Fed. Cir. 2017) (holding that concept of “local processing of payments for remotely purchased goods” is a “fundamental economic practice, which Alice made clear is, without more, outside the patent system.”).

authorization and settlement of the credit card transactions, after receipt of the credit card transaction information and the merchant information transmitted by the DIU and the PIM of the at least one vehicle.	activities and business relations. Rev. Guid. 52.
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In view of Table I, we find limitations [a] and [f]–[i] of independent Claim 22 recite abstract ideas, i.e., certain methods of organizing human activity. Thus, Claim 22 recites a judicial exception, *per se*. Our findings are in agreement with those of the Examiner who finds the claims are directed to the computer implementation of an abstract idea, i.e., the fundamental business practice of central batch settlement of credit card debt. Final Act 2.

Appellant contends the claims recite a plurality of hardware and physical, electronic components, thus, removing the claims from the sphere of abstract ideas. App. Br. 4.

*Step 2A(ii): Judicial Exception Integrated into a Practical Application?*

1. Integration.

If the claims recite a patent-ineligible concept, as we conclude above, we proceed to the “practical application” *Step 2A(ii)* wherein we determine whether the recited judicial exception is integrated into a practical application of that exception by: (a) identifying whether there are any additional elements recited in the claim beyond the judicial exception(s); and (b) evaluating those additional elements individually and in combination to determine whether they integrate the exception into a practical application.

For the reasons which follow, we conclude that Appellant's claims do not integrate the judicial exception into a practical application.

MPEP § 2106.05(a) "Improvements to the Functioning of a Computer or To Any Other Technology or Technical Field."

"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." MPEP § 2106.05(a).

With respect to technological improvements, Appellant contends the Examiner mischaracterizes the claims by ignoring the technical problems and solutions discussed in the Specification. App. Br. 7. Specifically, Appellant argues the "invention addresses the problem of lack of transaction information prior to the end of a driver shift along with the corresponding possibility of data loss and poor reporting, and the problem of time-consuming and complex settlement processing." *Id.* Appellant argues the claims provide information collection and distribution hardware in interconnected communication with a control center that is the sole entity that authorizes and settles transactions. *Id.* at 8

The problems addressed by Appellant's claims, i.e., "the problem of lack of transaction information" and "and the problem of time-consuming and complex settlement processing" (*see* App. Br. 7) are solved in the claims by the control center functioning as a clearinghouse mechanism. A clearinghouse is central agency for the collection, classification, and distribution especially of information and is broadly: an informal channel for

distributing information or assistance.<sup>16</sup> “The use of a third-party intermediary (or “clearing house”) is also a building block of the modern economy.” *Alice Corp. Pty. Ltd. v. CLS Bank Intern.*, 573 U.S. 208, 134 S.Ct. 2347, 2356 (2014) (citing Yadav, The Problematic Case of Clearinghouses in Complex Markets, 101 Geo. L.J. 387, 406–412 (2013)). “Thus, intermediated settlement [i.e., clearinghouse], like hedging, is an “abstract idea” beyond the scope of § 101.” *Alice, id.* As found in *Alice*, a clearinghouse is a fundamental business practice, but it is not a technology. We are not persuaded the claims improve the functioning of the computer itself or any other technology or technical field.

MPEP § 2106.05(b) Particular Machine.

Appellant contends that in the “claimed invention, the required intercommunication between the control center and the other physical components, such as the driver interactive unit (DIU), the passenger information monitor (PIM), the charging meter, and the payment card reader, inextricably tie the components together to provide a functional system for processing credit card transactions for a plurality of vehicles of a fleet of motor vehicles.” App. Br. 8 (citing *Ex parte Steiner*, 2012-0012381 (PTAB Apr. 23, 2015)).<sup>17</sup>

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<sup>16</sup> See *Clearinghouse Definition*, Merriam-Webster.com, <https://www.merriam-webster.com/dictionary/clearinghouse> (last accessed Dec. 19, 2019).

<sup>17</sup> The citation is apparently a typographic error where “*Ex parte Steiner*, 2012-001238 (PTAB Apr. 23, 2015)” is meant.

Appellant discloses a conventional computing environment comprising conventional hardware components. *See* Spec., ¶¶ 20–26. We find unavailing Appellant’s reliance on the Board’s non-precedential decision, *Ex parte Schmid*, Appeal No. 2012-002155 (PTAB Dec. 26, 2014). App. Br. 8. As a non-precedential decision of the Board, *Schmid* is not binding. *See* PTAB Standard Operating Procedure 2, Rev. 10 § I, at 3 (noting that “[e]very decision other than a precedential decision by the Precedential Opinion Panel is, by default, a routine decision. A routine decision is binding in the case in which it is made, even if it is not designated as precedential or informative, but it is not otherwise binding authority.”).<sup>18</sup> In view of Appellant’s disclosures, we find the claims are not tied to a “particular machine.” Rather, we “conclude that the method claims, which merely require generic computer implementation, fail to transform that abstract idea into a patent-eligible invention.” *Alice*, at 2357.

MPEP § 2106.05(c) Particular Transformation.

This section 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.” “Transformation and reduction of an article to a different state or thing is *the clue* to the patentability of a process claim that does not include particular machines.” *Bilski*, 561 U.S. at 658 (quoting *Benson*, 409 U.S. at 70).

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<sup>18</sup> This document is available at <https://www.uspto.gov/sites/default/files/documents/SOP2%20R10%20FINAL.pdf> (last accessed Apr. 18, 2019).

Appellant argues the claims provide information collection and distribution hardware in interconnected communication with a control center that is the sole entity that authorizes and settles transactions. App. Br. 8. Appellant further argues “the problem of lack of transaction information” and “and the problem of time-consuming and complex settlement processing” are solved in the claims by the control center functioning as a clearinghouse mechanism. *See* App. Br. 7. Appellant does not argue the claims act to transform or reduce an article to a different state. “The mere manipulation or reorganization of data . . . does not satisfy the transformation prong.” *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1375 (Fed. Cir. 2011).

MPEP § 2106.05(e) Other Meaningful Limitations.

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 . . . (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 . . . . 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 . . . . 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. . . . . 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).

“[T]he relevant question is whether the claims here do more than simply instruct the practitioner to implement the abstract idea . . . on a generic computer.” *Alice*, 573 U.S. at 225. Similarly as for *Alice*, we find that “[t]aking the claim elements separately, the function performed by the computer at each step of the process is ‘[p]urely conventional.’” *Id.* “In short, each step does no more than require a generic computer to perform generic computer functions.” *Id.* We find that Appellant’s claims do not add meaningful limitations beyond generally linking the use of the judicial exception to a particular technological environment.

MPEP § 2106.05(f) Mere Instructions To Apply An Exception.

Appellant does not persuasively argue that their claims do any more than to merely invoke generic computer components merely as a tool in which the computer instructions apply the judicial exception.

MPEP § 2106.05(g) Insignificant Extra-Solution Activity.

The claims obtain and communicate data which we find to be a classic example of insignificant extra-solution activity. *See, e.g., Bilski*, 545 F.3d at 963 (en banc), *aff’d sub nom, Bilski*, 561 U.S. 593.

MPEP § 2106.05(h) Field of Use and Technological Environment.

[T]he Supreme Court has stated that, even if a claim does not wholly pre-empt 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). We have not been persuaded that the limitations act other than to simply to limit the abstract idea to a particular technological environment.

2. Well-understood, routine, conventional.

Because the claims recite a judicial exception and do not integrate that exception into a practical application, we must then reach the issue of whether the claim adds a specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field. Revised Guidance, 84 Fed. Reg. at 56.

The written description describes the claimed computer system consistent with its being “well-understood, routine, [and] conventional.” *See* discussion, *supra*, of the conventional client-, merchant-, and service-provider-side computer architectures.

3. Specified at a high level of generality.

It is indicative of the absence of an inventive concept where the claims simply append well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception. Rev. Guid., 56.

The claims fail to recite any specific steps of an algorithm, nor does Appellant cite Specification disclosure for the required specificity.

We find the limitations are specified at such a high level of generality consistent with the absence of an inventive concept. Therefore, we conclude that none of the claim limitations, viewed “both individually and as an ordered combination,” amount to significantly more than the judicial exception in order to sufficiently transform the nature of the claims into patent-eligible subject matter. *See Alice*, 573 U.S. at 217 (internal quotations omitted) (quoting *Mayo*, 566 U.S. at 79).

In view of the foregoing, we sustain the rejection of Claims 22–24 under 35 U.S.C. § 101.

CLAIMS 22–24:

OBVIOUSNESS OVER ALBERT, STAMBAUGH, TAYLOR, AND SAUNDERS.

Appellant states “rather than focus on the § 103 rejections in this Appeal, applicant shall focus on the § 101 issues set forth above and will subsequently address the § 103 issues upon an indication that the § 101 rejections have been overcome.” App. Br. 10.

Appellant does not request review of the rejections under 35 U.S.C. § 103. App. Br. 10. We therefore, summarily affirm this rejection. *See* MANUAL OF PATENT EXAMINING PROCEDURE § 1205.02 (“If a ground of rejection stated by the examiner is not addressed in the appellant’s brief, that ground of rejection will be summarily sustained by the Board.”).

DECISION

The rejection of Claims 22–24 under 35 U.S.C. § 101 is **AFFIRMED**.

The rejection of Claims 1–20 under 35 U.S.C. § 103 is **SUMMARILY AFFIRMED**.

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<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
22-24	101	Eligibility	22-24	—
22-24	103	Albert, Stambaugh, Taylor, Saunders	22-24	—
<b>Overall Outcome</b>			22-24	—

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