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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte AMRISH VASANT CHAUBAL, DIPTIMAN DASGUPTA,
GIRIDHAR KRISHNAMURTHI, MYNAMPATI PRABHAKAR,
SIDDHARTH N. PUROHIT, and AMARDEEP RAIKER¹

Appeal 2018-001953
Application 12/886,242
Technology Center 3600

Before JAMES R. HUGHES, STEVEN M. AMUNDSON, and
JASON M. REPKO, *Administrative Patent Judges*.

HUGHES, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134(a) of the Examiner's decision rejecting claims 1, 2, 5–9, 12–16, 19, and 20. Claims 3, 4, 10, 11, 17, and 18 have been canceled. *See* Final Act. 1–2; Appeal Br. 1.² We have jurisdiction under 35 U.S.C. § 6(b).

¹ International Business Machines Corp. (“Appellant”) is the applicant as provided in 37 C.F.R. § 1.46 and is identified as the real party in interest. Appeal Br. 3.

² We refer to Appellant's Specification (“Spec.”) filed Sept. 20, 2010; Appeal Brief (“Appeal Br.”) filed Aug. 18, 2017; and Reply Brief (“Reply Br.”) filed Dec. 15, 2017. We also refer to the Examiner's Final Office

We affirm.

Appellant's Invention

The invention “relates generally to independent software vendors and related solutions. More particularly, the invention relates to methods for evaluating independent software vendors and related solutions that may be used within services oriented architectures.” Spec. ¶ 1; *see* Spec. ¶¶ 9–15; Abstract.

Representative Claim

Independent claim 1, reproduced below, further illustrates the invention:

1. A computer implemented method for evaluating an independent software vendor solution, the method comprising:

defining within a computer system a structured information capture framework for evaluation of a plurality of independent software vendor solutions, wherein the computer system comprises a processor;

defining within the computer system a scoring model that correlates with the structured information capture framework and comprises a multilevel weighted scoring algorithm, wherein said multilevel weighted scoring algorithm comprises:

a plurality of dimensions associated with at least one of said plurality of independent software vendor solutions, wherein each of said plurality of dimensions is assigned a primary weighting factor with the sum of all primary weighting factors being equal to 100%;

at least one subject correlated with at least one of said dimensions, wherein all of said subjects correlated with each of said at least one dimensions is assigned a secondary weighting factor with the sum of all secondary weighting factors for all

Action (“Final Act.”) mailed Feb. 16, 2017; and Answer (“Ans.”) mailed Oct. 16, 2017.

subjects correlated with each of said at least one dimensions being equal to 100%;

at least one parameter correlated with at least one of said subjects;

receiving within the computer system parameter level data for at least one of the plurality of independent software vendor solutions while using the structured information capture framework;

assigning, based on said received parameter level data, a ranking to said at least one parameter;

automatically calculating, utilizing said processor and further utilizing said multilevel weighted scoring algorithm, a subject score for each of said at least one subjects, comprising the step of calculating said subject score as a summation of the assigned ranking for all parameters correlated with the subject divided by the total number of parameters correlated with the subject;

automatically assigning, utilizing said processor and further utilizing said multilevel weighted scoring algorithm, the secondary weighting factor to each subject score to create a weighted subject score for each of said at least one subjects;

automatically calculating, utilizing said processor and further utilizing said multilevel weighted scoring algorithm, a dimension score for each of said plurality of dimensions, comprising the step of calculating said dimension score as a summation of the weighted subject score for all subjects correlated with the dimension;

automatically assigning, utilizing said processor and further utilizing said multilevel weighted scoring algorithm, the primary weighting factor to each dimension score to create a weighted dimension score for each of said plurality of dimensions;

automatically calculating, utilizing said processor and further utilizing said multilevel weighted scoring algorithm, a total score as a summation of the weighted dimension score for all dimensions; and

automatically ranking, using said total score, at least one of the-plurality [sic] of independent software vendor solutions.

Appeal Br. 20–21 (Claims App’x).

Rejection on Appeal

The Examiner rejects claims 1, 2, 5–9, 12–16, 19, and 20 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter.

ISSUE

Based upon our review of the record, Appellant’s contentions, and the Examiner’s findings and conclusions, the issue before us follows:

Did the Examiner err in determining Appellant’s claims were directed to patent-ineligible subject matter, without significantly more, under 35 U.S.C. § 101?

ANALYSIS

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. 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 Labs., 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 (1853))); 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, we first 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 § 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.³

See 2019 Revised Guidance.

Eligibility Analysis—Revised Guidance Steps 1 and 2A, Prong 1

Turning to the first step of the eligibility analysis, “the first step in the *Alice* inquiry . . . asks whether the focus of the claims is on the specific

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

asserted improvement in computer capabilities . . . or, instead, on a process that qualifies as an ‘abstract idea’ for which computers are invoked merely as a tool.” *Enfish*, 822 F.3d at 1335–36. “The abstract idea exception prevents patenting a result where ‘it matters not by what process or machinery the result is accomplished.’” *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1312 (Fed. Cir. 2016) (quoting *O’Reilly v. Morse*, 56 U.S. (15 How.) 62, 113 (1853)).

The Examiner rejects claims 1, 2, 5–9, 12–16, 19, and 20 as a group based on claim 1 (*see* Final Act. 2–6) and concludes claim 1 is directed to patent-ineligible subject matter because claim 1 is directed to the abstract idea of “a multilevel weighted scoring algorithm comprising a plurality of dimensions associated with at least one of said plurality of independent software vendor solutions” (Final Act. 2), and when “taken alone” or “as an ordered combination” “the additional elements do not amount to significantly more than the identified judicial exception” (Final Act. 5) in that “the additional elements” are recited “at a high-level of generality and the broadest reasonable interpretation includes generically recited computer elements . . . which do not add a meaningful limitation to the abstract idea because they would be routine in any computer implementation” (Final Act. 4). *See* Final Act 2–6; Ans. 2–11.

Here, in rejecting the claims (in particular claim 1) under 35 U.S.C. § 101, the Examiner analyzed the claims using the *Mayo/Alice* two-step framework, consistent with the guidance set forth in the USPTO’s “2014 Interim Guidance on Patent Subject Matter Eligibility,” 79 Fed. Reg. 74618 (Dec. 16, 2014), in effect at the time the rejection was made, i.e., on Feb. 16, 2017.

Conversely, Appellant contends that the Examiner erred in rejecting the claims as being directed to patent-ineligible subject matter. *See* Appeal Br. 14–19; Reply Br. 2–3. Specifically, Appellant contends, with respect to the first step of the *Alice* analysis, that:

[the] claims must be examined in their entirety in view of the specification, and should not be deconstructed or described at such a high level of abstraction that it ensures patent ineligibility.

Here, the claims are focused on a specific improvement in selecting an independent software vendor solution from among a plurality of independent software vendor solutions using a structured framework and complex multi-level scoring method, rather than simply utilizing a computer to complete a known process.

Thus, the “character as a whole” of the claims is not directed generally to an algorithm or an abstract idea, but to a specific novel and non-obvious flavor of identifying an independent software vendor solution from among a plurality of independent software vendor solution, the identified independent software vendor solution being best suited to satisfy a request for a solution based on one or more weighted factors. Accordingly, the claims are not directed to an abstract idea.

Appeal Br. 17. Appellant further contends that similar to *Thales Visionix, Inc. v. U.S.*, 850 F.3d 1343 (Fed. Cir. 2017), the instant claims

do not seek to protect—and thus are not directed to—a mathematical equation; in other words, the claims do not seek to protect the mathematics underlying the analysis performed on the independent software vendor solutions. Rather, the claims seek to protect a multi-step method or multi-component system that utilizes the claimed algorithm or mathematical analysis to derive a useful and concrete outcome, namely a ranking of a plurality of independent software vendor solutions.

Reply Br. 3.

For the reasons discussed below, we conclude Appellant’s claim 1 (and the other pending claims) recites abstract ideas, these abstract ideas are not integrated into a practical application, nor do they include an inventive concept. In view of the 2019 Revised Guidance, we clarify and expand the Examiner’s reasoning as follows.

We begin our analysis by broadly but reasonably construing Appellant’s claim 1 (*see* Appeal Br. 20–21 (Claims App’x)). Claim 1 recites “[a] computer implemented method for evaluating an independent software vendor solution.” That is, utilizing a computer to perform a process of evaluating vendor hardware and software combined in an integrated information technology solution (*see* Spec. ¶¶ 2–4).

Claim 1 also recites “defining within a computer system a structured information capture framework for evaluation of a plurality of independent software vendor solutions, wherein the computer system comprises a processor.” That is, defining (setting boundaries of, delineating) an information structure for capturing data relating to the evaluation of software vendor solutions, in a computer system including a processor (*see* Spec. ¶¶ 29–30, 34–35). Additionally, claim 1 recites “defining within the computer system a scoring model that correlates with the structured information capture framework and comprises a multilevel weighted scoring algorithm.” That is, delineating a scoring model (a predictive representation to determine a score), in the computer system, interrelated with the structured information capture framework, that includes a multilevel weighted scoring algorithm.

Claim 1 further describes the multilevel weighted scoring algorithm, reciting that the “multilevel weighted scoring algorithm comprises:” “a

plurality of dimensions associated with at least one of said plurality of independent software vendor solutions, wherein each of said plurality of dimensions is assigned a primary weighting factor with the sum of all primary weighting factors being equal to 100%.” That is, the algorithm includes multiple “dimensions”—high-level characteristics, aspects, attributes, or factors of an entity or situation (the software vendor solution) (*see* Spec ¶¶ 20, 31; Figs. 1, 4A–B)—to be considered in the evaluation. The dimensions are assigned a weight (totaling 100). Claim 1 also recites the multilevel weighted scoring algorithm comprising “at least one subject correlated with at least one of said dimensions, wherein [the] subjects . . . [are] assigned a secondary weighting factor with the sum of all secondary weighting factors for all subjects . . . being equal to 100%.” That is, the algorithm includes multiple “subjects”—mid-level characteristics of the software vendor solution (*see* Spec ¶¶ 20, 32; Figs. 1, 4A–B)—correlated with (a subdivision of) one or more dimensions. The subject(s) are assigned a weight (totaling 100). Additionally, claim 1 also recites the multilevel weighted scoring algorithm comprising “at least one parameter correlated with at least one of said subjects.” That is, the algorithm includes multiple “parameters”—low-level (specific) characteristics of the software vendor solution (*see* Spec ¶¶ 20, 32; Figs. 1, 4A–B)—correlated with (a subdivision of) one or more subjects.

Claim 1 continues, reciting several additional limitations, including: “receiving within the computer system parameter level data for at least one of the plurality of independent software vendor solutions while using the structured information capture framework.” In other words, receiving information (parameter level data or specific software vendor solution

characteristic data) using the structured information capture framework. Claim 1 also recites “assigning, based on said received parameter level data, a ranking to said at least one parameter.” That is, assigning a rank to each parameter (*see* Spec. ¶¶ 54, 60; Figs. 1, 4A–B, 7). Claim 1 further recites “automatically calculating, utilizing said processor and further utilizing said multilevel weighted scoring algorithm, a subject score for each of said at least one subjects” by “calculating said subject score as a summation of the assigned ranking for all parameters correlated with the subject divided by the total number of parameters correlated with the subject.” That is, automatically calculating a subject score for each subject using the multilevel weighted scoring algorithm operating on the processor. The calculation entails a summation of (summing or adding) the rankings of each correlated parameter and dividing the sum by the number of correlated parameters (i.e., determining the average of the correlated parameter ranking). *See* Spec ¶ 63; Fig. 7. Claim 1 additionally recites “automatically assigning, utilizing said processor and further utilizing said multilevel weighted scoring algorithm, [a] primary weighting factor to each dimension score to create a weighted dimension score for each of said plurality of dimensions.” That is, assigning (automatically, using the processor) a weight (primary weighting factor) to each dimension score according to (utilizing) the multilevel weighted scoring algorithm to create a weighted dimension score for each dimension.

The method also details calculating a total score and ranking the results. Claim 1 recites “automatically calculating, utilizing said processor and further utilizing said multilevel weighted scoring algorithm, a total score as a summation of the weighted dimension score for all dimensions.” In

other words, automatically calculating a total score using the multilevel weighted scoring algorithm operating on the processor, where the total score is the sum of the weighted dimension scores. Claim 1 also recites “automatically ranking, using said total score, at least one of the-plurality of independent software vendor solutions.” That is, automatically ranking (ordering) the evaluated software vendor solutions according to the total score.

In summary, claim 1 recites a computer implemented process for evaluating independent software vendor solutions (integrated information technology solutions) utilizing an information structure for capturing data (a structured information capture framework) and a scoring model including a multilevel weighted scoring algorithm to determine a score for and rank the independent software vendor solutions. Hereinafter, we refer to this process as the “evaluation process.”

We find that claim 1 recites a “computer implemented method” (*supra*)—the evaluation process. A process is a statutory category of invention (subject matter) (USPTO’s Step 1). Utilizing our interpretation of claim 1 (*supra*), we analyze whether the claim is directed to an abstract idea (USPTO’s Step 2A).

Here, Appellant’s claims generally, and independent claim 1 in particular (as summarized, *supra*), recite a process for deriving a score for independent software vendor solutions. This is consistent with how Appellant describes the claimed invention. *See* Appeal Br. 7–8; Spec. ¶¶ 1, 9–12, 14, 15, 29, 30, 32–37, 41–44, 47, 54, 60, 62–64; *see also* Spec. ¶ 13 (“A particular method in accordance with the invention includes . . . calculating for each of the plurality of independent software vendor

solutions while using the multilevel weighted scoring algorithm a final score to provide an independent software vendor solution ranking.”). Performing data analysis (an evaluation)—including delineating an information structure, deriving data to be analyzed, and delineating a predictive scoring representation (a scoring model) including criteria for the analysis (a multilevel weighted scoring algorithm) to determine a score and rank results (according to the score)—recites processes and analysis that may be accomplished using one’s mind or utilizing pen and paper. *See, e.g.*, Appellant’s Figs. 2–7, 9–14.

Appellant’s contentions (*supra*) focus on the purported technological improvements or advances provided by the recited evaluation process, as well as the tangible acts (defining a framework (for deriving information to be evaluated) and a model, inputting the received information using the framework, and utilizing the model (which includes an algorithm)) performed in the process. Claim 1, however, recites no substantive limitations on how the evaluation process “defines” the framework or the model, how the information to be evaluated is derived (the process for determining the various dimensions, subjects, and parameters), or how the various characteristic weightings are determined. The limitations are entirely functional in nature—for example, claim 1 recites “defining . . . a structured information capture framework for evaluat[ing] . . . independent software vendor solutions,” “defining . . . a scoring model that . . . comprises a multilevel weighted scoring algorithm,” the multilevel weighted scoring algorithm comprising: multiple high-level characteristics of the software vendor solutions (i.e., “dimensions”) that are “assigned a primary weighting factor,” one or more mid-level characteristics of the software vendor

solutions corresponding to the dimensions (i.e., “subjects”) that are “assigned a secondary weighting factor,” and at least one specific characteristic corresponding to the subject(s) (i.e., parameter(s)). Claim 1 further recites “receiving . . . parameter level data . . . using the structured information capture framework,” “assigning . . . a ranking to [the] parameter[(s)],” “automatically calculating, utilizing . . . [the] multilevel weighted scoring algorithm, a subject score for each” subject by adding (summing) “the assigned ranking for all parameters,” and “divid[ing] by the total number of parameters,” and “automatically calculating, utilizing” the “multilevel weighted scoring algorithm, a total score . . . for all dimensions.” See claim 1 (Appeal Br. 20–21 (Claims App’x)), our claim construction (*supra*), as well as Spec. ¶¶ 1, 9–15. A person can perform the function of each of the limitations delineated above by using pen and paper to draw representative graphs, charts, or tables depicting the information to be evaluated, assigning weights or ranks to the information, and utilizing basic math for the recited calculations. See, e.g., Appellant’s Figs. 2–7, 9–14. Nowhere does Appellant point to specific claim limitations that distinguish over a human process.

Performing information analysis, and the collection and exchange of information related to such analysis, may be an abstract concept that is not patent eligible. See *SAP America, Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1165, 1167–68 (Fed. Cir. 2018) (Claims reciting “[a] method for providing statistical analysis” (*id.* at 1165) were determined to be “directed to an abstract idea” (*id.* at 1168). “As many cases make clear, even if a process of collecting and analyzing information is limited to particular content or a particular source, that limitation does not make the collection and analysis

other than abstract” (*id.* (quotations omitted)). *See also Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1340 (Fed. Cir. 2017) (identifying the abstract idea of collecting, displaying, and manipulating data); *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016) (characterizing collecting information, analyzing information by steps people go through in their minds, or by mathematical algorithms, and presenting the results of collecting and analyzing information, without more, as matters within the realm of abstract ideas); *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat’l Ass’n*, 776 F.3d 1343, 1345, 1347 (Fed. Cir. 2014) (finding the “claims generally recite . . . extracting data . . . [and] recognizing specific information from the extracted data” and that the “claims are drawn to the basic concept of data recognition”); *Bancorp Servs., L.L.C. v. Sun Life Assurance Co. of Can. (U.S.)*, 687 F.3d 1266, 1278 (Fed. Cir. 2012) (“[T]he fact that the required calculations could be performed more efficiently via a computer does not materially alter the patent eligibility of the claimed subject matter.”).

Appellant’s claim 1 recites a judicial exception (USPTO’s Step 2A, Prong 1; *see* 2019 Revised Guidance). Specifically, claim 1 recites a computer implemented evaluation process for determining a score and ranking of independent software vendor solutions using a multilevel weighted scoring algorithm as discussed *supra*. The evaluation process consists of mental processes performed in the human mind (or utilizing pen and paper) including observation, evaluation, or judgment.

Eligibility Analysis—Revised Guidance Step 2A, Prong 2

Appellant’s claim 1 also recites additional elements beyond the abstract evaluation process (the judicial exception) (*supra*). These elements

include, the computer (for the “computer implemented method”), computer system, and processor (“wherein the computer system comprises a processor”). *See* claim 1 (Appeal Br. 20–21 (Claims App’x)) and our claim construction (*supra*). We evaluate these additional elements to determine whether the additional elements integrate the evaluation process (the judicial exception) into a practical application of the exception (USPTO’s Step 2A, Prong 2; *see* 2019 Revised Guidance).

Appellant contends that “the claimed invention is a tool with which a user can select a particular independent software vendor solution without bias, while being more efficient and reproducible” (Appeal Br. 18), and the claims recite “improvements in the tangible outcome of the method, namely an output that provides improved rankings to a user” (Reply Br. 3), in other words, the claims recite a technological improvement that amounts to more than simply utilizing a computer as a tool to accomplish the evaluation process.

Appellant’s contentions correspond to the reasoning in MPEP §§ 2106.05(a)–(c), where additional elements integrate the judicial exception into a practical application. We disagree. Appellant’s additional elements (or the combination of the additional elements) do not apply or use the evaluation process (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, Appellant’s claims recite computers (including the processor) that are utilized as tools to carry out the evaluation process (the abstract idea). Utilizing a computer as a tool to perform the abstract idea does not impose a meaningful limit on the abstract

idea. *See* MPEP § 2106.05(f); *see also Alice*, 573 U.S. at 223 (finding “if [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)).

Appellant’s claims can be distinguished from patent-eligible claims such as those in *McRO*, *Enfish*, *BASCOM Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016), and *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014) that are directed to “a specific means or method that improves the relevant technology” (*McRO*, 837 F.3d at 1314), or “a specific improvement to the way computers operate” (*Enfish*, 822 F.3d at 1336), solving a technology-based problem (*BASCOM*, 827 F.3d at 1349–52), or a method “rooted in computer technology in order to overcome a problem specifically arising in the realm of computer [technology]” (*DDR Holdings*, 773 F.3d at 1257). Contrary to Appellant’s arguments, claim 1 is not a technological improvement or an improvement in a technology. Appellant’s claim 1 does not “improve the functioning of the computer itself” or “any other technology or technical field.” *Alice*, 573 U.S. at 225. Nor does it provide a technological solution to a technological problem. *See DDR Holdings*, 773 F.3d at 1257; MPEP § 2106.05(a). Appellant fails to sufficiently and persuasively explain how the instant claims are directed to an improvement in the way computers operate, nor has Appellant identified any technical advance or improvement or specialized computer components. *See Appeal Br.* 17–19.

As discussed *supra*, nothing in claim 1, aside from the bare instruction to perform each step using a “computer system” or a “processor,” precludes a human from performing the evaluation process. The mere automation of a

process that can be performed by a human is not sufficient to show an improvement in computer functionality, and the fact that a computer or processor may increase efficiency—be “more efficient and reproducible” (Appeal Br. 18)—does not change the abstract-idea analysis. *See Intellectual Ventures*, 792 F.3d at 1370 (holding that “merely adding computer functionality to increase the speed or efficiency of the process does not confer patent eligibility on an otherwise abstract idea”); *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015) (“[R]elying on a computer to perform routine tasks more quickly or more accurately is insufficient to render a claim patent eligible.”); *see also FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1095 (Fed. Cir. 2016).

Moreover, even if Appellant’s claimed process includes an improved algorithm for determining an independent software vendor solution score, claim 1 does not specify any improvement in how a computer processor performs the underlying mathematical analysis necessary to perform the algorithm. In other words, only the abstract ideas in claim 1 are potentially new (although we make no determination as to novelty or obviousness), not the way a computer processor operates.

To the extent Appellant contends ranking the scored results (the independent software vendor solutions) demonstrates significant non-abstract subject matter (*see, e.g.*, Appeal Br. 18), such activity is merely extra-solution activity. *See* MPEP § 2106.05(g).

In summary, “the focus of the claims is not on such an improvement in computers as tools, but on certain independently abstract ideas that use computers as tools.” *Elec. Power Grp.*, 830 F.3d at 1354; *see also*

MPEP § 2106.05(f) (emphasis omitted) (instructing Examiners to consider “[w]hether the claim invokes computers or other machinery merely as a tool to perform an existing process” in determining whether the claim recites mere instructions to apply the exception), *cited in* 2019 Revised Guidance, 84 Fed. Reg. at 55, n.30. Thus, we conclude the claims are directed to an abstract idea that is not integrated into a practical application.

Step 2B Analysis—“Significantly More”

Having concluded Appellant’s claims are directed to an abstract idea under the 2019 Revised Guidance Step 2A analysis, we next address whether the claims add significantly more to the alleged abstract idea. 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*, 837 F.3d at 1312 (quoting *Alice*, 573 U.S. at 217). The implementation of the abstract idea involved must be “more than 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*, 827 F.3d at 1349 (citation omitted).

Here, the Examiner rejects claims 1, 2, 5–9, 12–16, 19, and 20 as being directed to patent-ineligible subject (*supra*), and concludes that when “taken alone” or “as an ordered combination” “the additional elements do not amount to significantly more than the identified judicial exception” (Final Act. 5) in that “the additional elements” are recited “at a high-level of generality and the broadest reasonable interpretation includes generically

recited computer elements . . . which do not add a meaningful limitation to the abstract idea because they would be routine in any computer implementation” (Final Act. 4). *See* Final Act. 2–6; Ans. 2–11. In other words, the Examiner determined that Appellant’s claims do not add significantly more. *See id.*

Appellant, on the other hand, contends the claims “comprise[] unconventional elements which supply an inventive concept” in that “the system does not merely use a known or preexisting algorithm or series of steps to arrive at a ranking of vendor solutions.” Instead, “the system . . . assigns weights to a plurality of different factors using a multilevel weighted scoring process, and determines which of the plurality of possible independent software vendor solutions is best suited to produce the desired result, based on ranking.” Appeal Br. 18.

Additionally, Appellant contends that because the USPTO did not make a prior-art rejection in the Final Office Action, the claims “suppl[y] an inventive concept, and therefore amount[] to significantly more than an abstract idea” in that the claims “recite a specific, detailed, non-conventional sequence of steps which do not preempt the entire field, as evidenced by the novelty and non-obviousness of the claims.” Appeal Br. 18.

Appellant fails to persuade us of error in the Examiner’s rejection with respect to the second *Alice* step. We agree with the Examiner that Appellant’s claim 1 (and the other pending claims) does not evince an “inventive concept” that is significantly more than the abstract idea itself. In particular, Appellant fails to explain how the additional elements (above) add specific limitations beyond the judicial exception that are not well-understood, routine, and conventional in the field.

As previously discussed, claim 1 (and the other pending claims) merely recites additional non-abstract elements (above)—specifically the computer and processor—to perform the evaluation process (the abstract idea).

Appellant’s Specification describes the processor and computer as conventional (generic) computers performing traditional computer functions. *See, e.g.*, Spec. ¶¶ 77 (“These computer program instructions may be provided to a processor of a general purpose computer . . . or other programmable data processing apparatus . . . such that the instructions, which execute via the processor of the computer . . . [carry out] the functions/acts specified.”).

Accordingly, Appellant’s Specification itself describes the additional elements as being well understood, routine, and conventional. Such conventional computer processes operating on conventional computer hardware “do not alone transform an otherwise abstract idea into patent-eligible subject matter.” *FairWarning*, 839 F.3d at 1096 (citing *DDR Holdings*, 773 F.3d at 1256).

For at least the reasons above, we are not persuaded of Examiner error in the rejection of claim 1 under 35 U.S.C. § 101. Thus, we sustain the Examiner’s rejection under § 101 of independent claim 1, independent claims 8 and 15, and dependent claims 2, 5–7, 9, 12–14, 16, 19, and 20, which depend from claims 1, 8, and 15 (respectively) and which were not separately argued with specificity.

CONCLUSION

Appellant has not shown that the Examiner erred in rejecting claims 1, 2, 5–9, 12–16, 19, and 20 under 35 U.S.C. § 101.

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DECISION

We affirm the Examiner's rejection of claims 1, 2, 5–9, 12–16, 19, and 20.

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