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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte LAURA E. WEINFLASH and LARRY W. SPOONER

Appeal 2018-002311
Application 13/947,271
Technology Center 3600

Before JOHNNY A. KUMAR, JOHN A. EVANS, and JOYCE CRAIG,
Administrative Patent Judges.

EVANS, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellants¹ seek our review under 35 U.S.C. § 134(a) of the Examiner's final rejection of Claims 2–23, all pending claims. Final Act. 2. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.²

¹ Appellants state the real party in interest is Early Warning Services, LLC. App. Br. 3.

² Rather than reiterate the arguments of Appellants and the Examiner, we refer to the Appeal Brief (filed September 20, 2017, "App. Br."), the Reply Brief (filed December 12, 2017, "Reply Br."), the Examiner's Answer (mailed October 31, 2017, "Ans."), the Final Action (mailed June 6, 2017,

STATEMENT OF THE CASE

The claims relate to a method of making check-risk decisions. *See* Abstract.

Invention

Claims 2 and 13 are independent. An understanding of the invention can be derived from a reading of claim 2, which is reproduced below with some formatting added:

2. A computer-implemented method for facilitating the making of a risk decision through a member service, comprising:

receiving and storing, at a first database system maintained by the member service and accessed by a computer, status data relating to accounts maintained by a plurality of member institutions that belong to the member service, the status data received from the member institutions, wherein the member institutions are financial institutions that belong to the member service for assessing risk that a transaction will not clear;

receiving and storing, at a second database system maintained by the member service and accessed by the computer, account activity data relating to accounts of a plurality of non-member institutions that do not belong to the member service, the account activity data contributed by member institutions and relating to accounts not maintained by the contributing member institutions;

filtering the activity data received at the second database system to remove activity data relating to accounts maintained by member institutions, and thereby storing in the second

“Final Act.”), and the Specification (filed July 22, 2013, “Spec.”) for their respective details.

database system only data relating to accounts of non-member institutions that do not belong to the member service;

populating the second database system with risk data reflecting the likelihood that a transaction conducted against a specific account will not clear, as determined by a risk scoring model;

receiving, at the computer, account data relating to an account against which a transaction is conducted;

using the account data, at the computer, to determine if the transaction is conducted against one of the accounts of member institutions that belong to the member service and to determine if the transaction is conducted against one of the accounts of non-member institutions that do not belong to the member service;

accessing the first database system to make a risk decision for accounts of member institutions that belong to the member service; and

accessing the second database system to make a risk decision for accounts of nonmember institutions that do not belong to the member service;

wherein an inquiring institution makes a risk decision for accounts of member institutions based on status data accessed from the first database system and makes a risk decision for accounts of non-member institutions based on risk data accessed from the separate, second database system.

*Rejection*³

Claims 2–23 stand rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter without significantly more.⁴ Final Act. 17–23.

ANALYSIS

We have reviewed the rejections of claims 2–23 in light of Appellants’ arguments that the Examiner erred. We have considered in this decision only those arguments Appellants actually raised in the Briefs. Any other arguments which Appellants could have made but chose not to make in the Briefs are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv). We are not persuaded that Appellants identify reversible error. Upon consideration of the arguments presented in the Appeal Brief and Reply Brief, we agree with the Examiner that all the pending claims are unpatentable. We consider Appellants’ arguments as they are presented in the Appeal Brief, pages 6–20.

CLAIMS 2–23: INELIGIBLE SUBJECT MATTER

Based upon our de novo review of the record in light of recent Director Policy Guidance with respect to patent-eligible subject matter rejections under 35 U.S.C. § 101, we affirm the rejection of claims 2–23 for the specific reasons discussed below. “Whether a claim is drawn to patent-

³ The present application was examined under the pre-AIA first to invent provisions. Final Act. 2.

⁴ The Examiner finds each claim recites non-obvious subject matter. Final Act. 8–11.

eligible subject matter is an issue of law that we review de novo.” *SiRF Tech., Inc. v. Int’l Trade Comm’n*, 601 F.3d 1319, 1331 (Fed. Cir. 2010).

Appellants argue all claims as a group in view of the limitations of claim 2. *See* App. Br. 16–17 (“the pending claims (e.g., independent claim 2) recite significantly more than the Examiner’s characterized abstract idea of ‘facilitating check risk decisions for member and non-member institutions’.”). Therefore, we decide the appeal of the § 101 rejections with reference to claim 2, 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).

Prima Facie Case

Appellants contend the Examiner fails to make a prima facie case that claim 2 recites patent-ineligible subject matter. *See* App. Br. 45.

We conclude that the Examiner did initially set forth a prima facie case of patent-ineligibility, i.e., the Examiner’s reasons are sufficient to set forth the basis for the rejection so as to put the patent applicant on notice of the reasons why the applicant is not entitled to a patent. *Cf. In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

Preemption.

Appellants contend “it is clear that the claims at issue do not attempt to preempt every application of the abstract idea as characterized by the Examiner (‘facilitating check risk decisions for member and non-member institutions’).” App. Br. 19.

While 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. In response to Supreme Court and Federal Circuit opinions, the USPTO has issued updated guidance. We review this appeal within the framework of the Revised Guidance⁵ which specifies and particularizes the *Mayo/Alice* framework.

35 U.S.C. § 101

Section 101 provides that a patent may be obtained for “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.” 35 U.S.C. § 101. The Supreme Court has long recognized, however, that § 101 implicitly excludes “[l]aws of nature, natural phenomena, and abstract ideas” from the realm of patent-eligible subject matter, as monopolization of these “basic tools of scientific and technological work” would stifle the very innovation that the patent system aims to promote. *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014) (quoting *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)); *see also Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S.66, 72–78 (2012); *Diamond v. Diehr*, 450

⁵ USPTO, 2019 Revised Patent Subject Matter Eligibility Guidance, 84(4) Fed. Reg. 50–57 (January 7, 2019) (“Revised Guidance,” “Rev. Guid.”).

U.S. 175, 185 (1981).

Under the mandatory Revised Guidance, we reconsider whether Appellants' claims recite:

1. 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), and
2. **additional elements** that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h)).

Only if a claim, (1) recites a judicial exception, and (2) does not integrate that exception into a practical application, do we then reach the issue of 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.

1. Judicial Exceptions.

The Revised Guidance extracts and synthesizes key concepts identified by the courts as abstract ideas to explain that the abstract idea exception includes the following groupings of subject matter, when recited as such in a claim limitation(s) (that is, when recited on their own or *per se*):

(a) mathematical concepts,⁶ i.e., mathematical relationships, mathematical formulas, equations,⁷ and mathematical calculations⁸; (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

⁶ *Bilski v. Kappos*, 561 U.S. 593, 611 (2010) (“The concept of hedging . . . reduced to a mathematical formula . . . is an unpatentable abstract idea.”).

⁷ *Diehr*, 450 U.S. at 191 (“A mathematical formula as such is not accorded the protection of our patent laws”); *Parker v. Flook*, 437 U.S. 584, 594 (1978) (“[T]he discovery of [a mathematical formula] cannot support a patent unless there is some other inventive concept in its application.”).

⁸ *SAP America, Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1163 (Fed. Cir. 2018) (holding that claims to a “series of mathematical calculations based on selected information” are directed to abstract ideas).

instructions)⁹; and (c) mental processes¹⁰—concepts performed in the human mind (including observation, evaluation, judgment, opinion).¹¹

The preamble of claim 2 recites “[a] computer-implemented method for facilitating the making of a risk decision through a member service, comprising.”¹² The further recitations are set forth in Table I and analyzed for abstract ideas as set forth in the Revised Guidance.

Table I

Claim 2	Revised Guidance
[L1] receiving and storing, at a first database system maintained by the member service and accessed by a	Insignificant extra-solution activity, e.g., mere data gathering such as a step of obtaining information about

⁹ *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); see Revised Guidance at 52 n.13 for a more extensive listing of “certain methods of organizing human activity” that have been found to be abstract ideas.

¹⁰ If a claim, under its broadest reasonable interpretation, covers performance in the mind but for the recitation of generic computer components, then it is still in the mental processes category unless the claim cannot practically be performed in the mind. See Revised Guidance at 52, n.14; see *Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1318 (Fed. Cir. 2016) (“[W]ith the exception of generic computer-implemented steps, there is nothing in the claims themselves that foreclose them from being performed by a human, mentally or with pen and paper.”).

¹¹ *Mayo*, 566 U.S. at 71 (“[M]ental processes[] and abstract intellectual concepts are not patentable, as they are the basic tools of scientific and technological work” (quoting *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972))).

¹² Limitation identifiers, e.g., “[L1]” added to facilitate discussion.

<p>computer, status data relating to accounts maintained by a plurality of member institutions that belong to the member service, the status data received from the member institutions, wherein the member institutions are financial institutions that belong to the member service for assessing risk that a transaction will not clear;</p>	<p>credit card transactions so that the information can be analyzed in order to detect whether the transactions were fraudulent. Rev. Guid. at 55 n.31.</p>
<p>[L2] receiving and storing, at a second database system maintained by the member service and accessed by the computer, account activity data relating to accounts of a plurality of non-member institutions that do not belong to the member service, the account activity data contributed by member institutions and relating to accounts not maintained by the contributing member institutions;</p>	<p>Receiving and storing data is extra-solution activity. Rev. Guid. at 55 n.31.</p>
<p>[L3] filtering the activity data received at the second database system to remove activity data relating to accounts maintained by member institutions, and thereby storing in the second database system only data relating to accounts of non-member institutions that do not belong to the member service;</p>	<p>(b) Certain methods of organizing human activity—fundamental economic principles or practices (including hedging, insurance, mitigating risk). Rev. Guid. at 52. Mere use of a computer as a tool to perform an abstract idea. <i>See Benson</i>, 409 U.S. 63 (holding that merely implementing a mathematical principle on a general purpose computer is a patent ineligible abstract idea). Rev. Guid. at 55 n.30.</p>

<p>[L4] populating the second database system with risk data reflecting the likelihood that a transaction conducted against a specific account will not clear, as determined by a risk scoring model;</p>	<p>(b) Certain methods of organizing human activity—fundamental economic principles or practices (including hedging, insurance, mitigating risk). Rev. Guid. at 52. Mere use of a computer as a tool to perform an abstract idea.¹³</p>
<p>[L5] receiving, at the computer, account data relating to an account against which a transaction is conducted;</p>	<p>Receiving and storing data is extra-solution activity. Rev. Guid. at 55 n.31.</p>
<p>[L6] using the account data, at the computer, to determine if the transaction is conducted against one of the accounts of member</p>	<p>(c) Mental processes—concepts performed in the human mind¹⁴ (including an observation, evaluation, judgment, opinion).¹⁵</p>

¹³ See e.g., *Benson*, 409 U.S. 63 (holding that merely implementing a mathematical principle on a general purpose computer is a patent ineligible abstract idea); *Credit Acceptance Corp. v. Westlake Services*, 859 F.3d 1044 (Fed. Cir. 2017) (using a computer as a tool to process an application for financing a purchase). Rev. Guid. n.30.

¹⁴ If a claim, under its broadest reasonable interpretation, covers performance in the mind but for the recitation of generic computer components, then it is still in the mental processes category unless the claim cannot practically be performed in the mind. See *Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1318 (Fed. Cir. 2016) (“[W]ith the exception of generic computer-implemented steps, there is nothing in the claims themselves that foreclose them from being performed by a human, mentally or with pen and paper.”). Rev. Guid. n.14.

¹⁵ *Mayo*, 566 U.S. at 71 (“ ‘[M]ental processes[] and abstract intellectual concepts are not patentable, as they are the basic tools of scientific and technological work’ ” (quoting *Benson*, 409 U.S. at 67)). Rev. Guid. n.15.

<p>institutions that belong to the member service and to determine if the transaction is conducted against one of the accounts of non-member institutions that do not belong to the member service;</p>	
<p>[L7] accessing the first database system to make a risk decision for accounts of member institutions that belong to the member service; and</p>	<p>Mere use of a computer as a tool to perform an abstract idea.</p>
<p>[L8] accessing the second database system to make a risk decision for accounts of nonmember institutions that do not belong to the member service;</p>	<p>Mere use of a computer as a tool to perform an abstract idea.</p>
<p>[L9] wherein an inquiring institution makes a risk decision for accounts of member institutions based on status data accessed from the first database system and makes a risk decision for accounts of non-member institutions based on risk data accessed from the separate, second database system.</p>	<p>(c) Mental processes—concepts performed in the human mind (including an observation, evaluation, judgment, opinion).</p>

In accordance with the Revised Guidance, we conclude limitations L3 and L4 recite a fundamental economic activity of mitigating risk, which the Revised Guidance terms a “certain method of organizing human activity.” Rev. Guid., 52. Appellants disclose the “prior art participant database 10 is populated by a daily flow of checking account status and item level data from each of the participant pay or institutions.” Spec., ¶ 10. Appellants

further disclose: “a payment processor may use this information to make a decision regarding whether or not to open the line of credit or ‘open to buy’ until the check clears. A merchant may also use the information to decline to “accept the check.” *Id.* Thus, claim 2 recites at least one abstract idea, *per se*.

2. Integration of the judicial exception into a practical application.

Where, as here, we determine the claims recite a judicial exception, we look to determine the presence of additional elements that integrate the judicial exception into a practical application. The Revised Guidance is “designed to more accurately and consistently identify claims that recite a practical application of a judicial exception [] and thus are not ‘directed to’ a judicial exception.” Rev. Guid. at 53.

The claims recite a practical application where an additional element reflects an improvement in the functioning of a computer, or an improvement to other technology or technical field.¹⁶ Revised Guidance at 55.

The Examiner finds the claims are directed to the abstract idea of facilitating check risk decisions which is a fundamental economic practice and is “an idea of itself” which “can be performed in the human mind, or by a human using a pen and paper”. Final Act. 18.

¹⁶ The Revised Guidance also finds integration into a practical application where the judicial exception is used in medical treatment or to transform an article to a different state. Revised Guidance at 55. Such considerations are not before us.

Appellants contend the Examiner’s finding that the claims are directed to “facilitating check risk decisions” results from characterizing the claims “at an impermissibly high level of abstraction and also does not properly reflect the concept recited in the claims.” App. Br. 7.

In Table I, above, we examine each limitation of claim 2 and find, in accordance with the Examiner, that the claims are directed to facilitating risk management (see limitations L3 and L4) and find the method can be substantially performed with paper and pencil (see limitations L6 and L9).

Appellants argue the claims “cannot be oversimplified ‘by looking at them generally and failing to account for the specific requirements of the claims,’ and the ‘directed to’ inquiry must be done ‘without ignoring the requirements of the individual steps.’” *Id.* (quoting *McRo*, slip op. 21). As shown above in Table I, our analysis, which accords with that of the Examiner, was performed keeping in mind “the requirements of the individual steps.”

Appellants further argue “performing the ‘directed to’ inquiry requires analysis of the claims as a whole rather than on a piecemeal basis.” *Id.* (quoting *Enfish*). The “as a whole” analysis asks whether further limitations integrate the judicial exception into **a practical application**. See MPEP §§ 2106.05(a)-(c) and (e)-(h).

For the reasons which follow, we conclude that Appellants’ claims do not integrate the judicial exception into a practical application. 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.”

“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, Appellants contend:

[T]he focus of the claimed advance over the prior art is the specifically recited database structure . . . with two databases maintained by a member service, where data contributed to the second (non-participant) database is filtered to remove activity data relating to accounts of member institutions, so that second database only stores data relating to accounts of non-member institutions.

App. Br. 9. Appellants further argue “the Examiner is ignoring the significant operational and functional features of the recited database structure.” Reply Br. 3 (citing App. Br. 17).

Appellants’ contentions seem to imply the claimed databases function in a manner other than selectively sorting data into a database. However, the Appeal Brief argues:

[T]he independent claims (such as claim 2) recite specially programmed computer systems and methods that require the specifically recited database structure (as described above), with two databases maintained by a member service, where data contributed to the second (non-participant) database is filtered to remove activity data relating to accounts of member institutions, so that second database only stores data relating to accounts of non-member institutions. When a transaction is conducted against an account, the account number is checked against the participant database and the non-participant database, and appropriate data is returned from the participant database (for accounts of member institutions) or from the non-participant database (for accounts of non-member institutions).

App. Br. 17 (cited by Appellant).

Contrary to Appellants' contentions, we find no "specially programmed computer systems" to be recited in the claims. Nor do Appellants cite to the Specification for disclosure of such systems. Rather, Appellants disclose the "present invention may be implemented with any combination of hardware and software." Spec. ¶ 68.

We thus find the claims do not recite an improvement to the functioning of a computer, nor of any other technology.

MPEP § 2106.05(b) "Particular Machine."

At the outset, we note that the *Bilski* machine-or-transformation test is only applicable to the method (process) claims on appeal. This section of the MPEP guides: "When determining whether a claim recites significantly more than a judicial exception, examiners should consider whether the judicial exception is applied with, or by use of, a particular machine." *See Bilski v. Kappos*, 561 U.S. 593, 604 (2010) ("[T]he machine-or-transformation test is a useful and important clue, and investigative tool" for determining whether a claim is patent eligible under § 101). MPEP § 2106.05(b).

MPEP § 2106.05(b) provides further guidance regarding what constitutes a particular machine:

[A]s described in MPEP §2106.05(f), additional elements that invoke computers or other machinery merely as a tool to perform an existing process will generally not amount to significantly more than a judicial exception. *See, e.g., Versata Development Group v. SAP America*, 793 F.3d 1306, 1335 (Fed. Cir. 2015) (explaining that in order for a machine to add

significantly more, it must “play a significant part in permitting the claimed method to be performed, rather than function solely as an obvious mechanism for permitting a solution to be achieved more quickly”).

In view of our discussion of MPEP § 2106.05(b) “Particular Machine,” we find the claims on appeal are *silent* regarding specific limitations directed to an *improved* computer system, processor, memory, network, database, or Internet, nor do Appellants direct our attention to such specific limitations. “[T]he mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention.” *Alice*, 573 U.S. at 223; *see also* *BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1348 (Fed. Cir. 2016) (“An abstract idea on ‘an Internet computer network’ or on a generic computer is still an abstract idea”). Applying this reasoning here, we conclude Appellants’ claims are not directed to a particular machine, but rather merely implement an abstract idea using generic computer components. Our finding accords with that of the Examiner. *See* Ans. 14 (“The appellant does not claim nor have support for a special purpose computer.”). Rev. Guid. n.32.

Thus, we conclude Appellants’ method claims fail to satisfy the “tied to a particular machine” prong of the *Bilski* machine-or-transformation test.

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.” “[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. at 658 (quoting *Benson*, 409 U.S. at 70).

The claims operate to select and analyze certain electronic data related to the risk of check-fraud. The selection of electronic data is not a “transformation or reduction of an *article* into a different state or thing constituting patent-eligible subject matter[.]” *See In re Bilski*, 545 F.3d 943, 962 (Fed. Cir. 2008) (emphasis added). *See also CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1375 (Fed. Cir. 2011) (“The mere manipulation or reorganization of data . . . does not satisfy the transformation prong.”). Applying this guidance here, we conclude Appellants’ method claims fail to satisfy the transformation prong of the *Bilski* machine-or-transformation test.

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. 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).

“[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.*

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

Appellants are not persuasive that their claims do any more than to invoke generic computer components as a tool in which the computer instructions apply the judicial exception.

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

Limitation [L2] recites:

receiving and storing, at a second database system maintained by the member service and accessed by the computer, account activity data relating to accounts of a plurality of non-member institutions that do not belong to the member service, the account activity data contributed by member institutions and relating to accounts not maintained by the contributing member institutions.

Limitation [L1] contains a commensurate recitation respecting the accounts of member institutions. We find these limitations recite insignificant extra-solution activity. Receiving and storing data is extra-solution activity. Rev. Guid. n.31; *see, e.g., Bilski*, 545 F.3d at 963 (en banc), *aff'd sub nom, Bilski v. Kappos*, 561 U.S. 593 (2010).

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 find the limitations relating to the “account activity data relating to accounts of a plurality of [member or] non-member institutions” are simply a field of use that attempts to limit the abstract idea to a particular technological environment.

We do not find Appellants’ argument to be persuasive because “[t]he courts have also identified examples in which a judicial exception has not been integrated into a practical application.” Revised Guidance at 55. The claims fail to recite a practical application where the additional element does no more than generally link the use of a judicial exception to a particular technological environment or field of use. *Id.* The mere application of an abstract idea in a particular field is not sufficient to integrate the judicial exception into a practical application. *See id.* at n.32.

In view of the foregoing, we conclude the claims fails to integrate the judicial exception into a practical application, but are “directed to” a judicial exception.

3. Well-understood, routine, conventional.

Because the claims recite a judicial exception and does 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 at 56.

The Examiner finds the “invention uses general purpose computers which are used in routine and convention ways and perform typical computer functions, which would not likely constitute ‘significantly more’ or show improvement of the functioning of the computer or improvement of the technology/technical field.” Ans. 14.

Appellants contend “the Examiner is ignoring the significant operational and functional features of the recited database structure.” Reply Br. 3.

Appellants cite no disclosure or other evidence in support of this contention. Arguments of counsel cannot take the place of factually supported objective evidence. *In re Huang*, 100 F.3d 135, 139–140 (Fed. Cir. 1996). Attorney argument is not evidence. *In re Pearson*, 494 F.2d 1399, 1405 (CCPA 1974). Nor can it take the place of evidence lacking in the record. *Meitzner v. Mindick*, 549 F.2d 775, 782 (CCPA 1977). Lawyer’s arguments and conclusory statements, which are unsupported by

factual evidence, are entitled to little probative value. *In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997). We find such “well-understood, routine, [and] conventional” limitations fail to indicate the presence of an inventive concept.

4. 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. Revised Guidance at 56.

Limitation [L4] recites “populating the second database system with risk data reflecting the likelihood that a transaction conducted against a specific account will not clear, as determined by a risk scoring model.” However, neither the claimed “risk scoring model,” nor an algorithm by which it might be determined, is specified. Rather, a non-specific model is recited at a high level of generality.

We find the claimed “risk scoring model” limitation is 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 2–23 under 35 U.S.C. § 101.

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DECISION

We affirm the rejection of claims 2–23 under 35 U.S.C. § 101.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 41.50(f).

AFFIRMED