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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/311,758	12/19/2005	Gary Gilchrist	B163/ADBS.209192	9211
121363	7590	12/23/2019	EXAMINER	
Shook, Hardy & Bacon L.L.P. (Adobe Inc.) Intellectual Property Department 2555 Grand Blvd Kansas City, MO 64108			ZELASKIEWICZ, CHRYSTINA E	
			ART UNIT	PAPER NUMBER
			3621	
			NOTIFICATION DATE	DELIVERY MODE
			12/23/2019	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GARY GILCHRIST and
SANGAMESWARAN VISWANATHAN

Appeal 2018-002427
Application 11/311,758¹
Technology Center 3600

Before JOSEPH A. FISCHETTI, NINA L. MEDLOCK, and
AMEE A. SHAH, *Administrative Patent Judges*.

FISCHETTI, *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 final rejection of claims 2, 10, 17, 29–33, 35–38, and 40–46. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF DECISION

We affirm.

¹ We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. The Appellant identifies the real party in interest as ADOBE SYSTEMS INCORPORATED. Appeal Br. 3.

THE INVENTION

The Appellant states, “[t]he subject matter hereof relates generally to the field of digital rights management, and more particularly to authentication in digital rights management.” Spec. ¶ 1.

Claim 2, reproduced below, is representative of the subject matter on appeal.

2. A system comprising:
 - a policy server device to support a plurality of available authentication schemes for controlling access to digital content; and
 - an interface to receive a selection of a set of authentication schemes from the plurality of available authentication schemes to be added to a digital rights management policy for a unit of digital content, the set of authentication schemes comprising at least a first authentication scheme corresponding to a first set of permissions for the unit of digital content and a second authentication scheme corresponding to a second set of permissions for the unit of digital content,
 - the policy server device further to
 - associate the set of authentication schemes in the digital rights management policy with the unit of digital content,
 - receive an authentication request, the authentication request indicating a user is seeking access to the unit of digital content through a reader application remote from the policy server device,
 - authenticate the user in response to the request using at least one of the authentication schemes within the set of authentication schemes in the digital rights management policy for the unit of digital content, and
 - based on the at least one of the authentication schemes used to authenticate the user in association with the unit of digital content, authorize a set of permissions, wherein the first set of permissions for the unit of digital content is authorized

when the first authentication scheme is used to authenticate the user and the second set of permissions for the unit of digital content is authorized when the second authentication scheme is used to authenticate the user.

REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Name	Reference	Date
Igarashi	US 2002/0080397 A1	June 27, 2002
Chiviendacz	US 2006/0156385 A1	July 13, 2006

The following rejections are before us for review.

Claims 2, 10, 17, 29–33, 35–38, and 40–46 are rejected under 35 U.S.C. § 101 as being patent ineligible.

Claims 2, 10, 17, 29–33, 35–38, and 40–46 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Chiviendacz in view of Igarashi.

FINDINGS OF FACT

We adopt the Examiner’s findings as set forth on pages 2–6 in the Final Office Action² and on pages 3–10 in the Examiner’s Answer, concerning only the 35 U.S.C. § 101 rejection.

ANALYSIS

35 U.S.C. § 101 REJECTIONS

We will affirm the rejection of claims 2, 10, 17, 29–33, 35–38, and 40–46 under 35 U.S.C. § 101.

The Appellant argues claims 2, 10, 17, 29–33, 35–38, and 40–46 as a group. (Appeal Br. 7). We select claim 2 as the representative claim for this group, and so the remaining claims stand or fall with claim 2. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2015).

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

In determining whether a claim falls within an excluded category, we are guided by the Supreme Court’s two-step framework, described in *Mayo* and *Alice*. *Alice*, 573 U.S. at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–77 (2012)). In accordance with that framework, we first determine what concept the claim is “directed to.”

² All references to the Final Office Action refer to the Final Office Action mailed on August 18, 2016.

See id. at 219 (“On their face, the claims before us are drawn to the concept of intermediated settlement, *i.e.*, the use of a third party to mitigate settlement risk.”); *see also Bilski v. Kappos*, 561 U.S. 593, 611 (2010) (“Claims 1 and 4 in petitioners’ application explain the basic concept of hedging, or protecting against risk.”).

Concepts determined to be abstract ideas, and thus patent ineligible, include certain methods of organizing human activity, such as fundamental economic practices (*Alice*, 573 U.S. at 219–20; *Bilski*, 561 U.S. at 611); mathematical formulas (*Parker v. Flook*, 437 U.S. 584, 594–95 (1978)); and mental processes (*Gottschalk v. Benson*, 409 U.S. 63, 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 187; *see also id.* at 191 (“We view respondents’ claims as nothing more than a process for molding rubber products and not as an attempt to patent a mathematical formula.”). Having said that, the Supreme Court also indicated that a claim “seeking patent protection for that formula in the abstract . . . is not accorded the protection of our patent laws, . . . and this principle cannot be circumvented by attempting to limit the use of the formula to a particular technological

environment.” *Id.* (citing *Benson* and *Flook*); *see, e.g., id.* at 187 (“It is now commonplace that an *application* of a law of nature or mathematical formula to a known structure or process may well be deserving of patent protection.”).

If the claim is “directed to” an abstract idea, we turn to the second step of the *Alice* and *Mayo* framework, where “we must examine the elements of the claim to determine whether it contains an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Alice*, 573 U.S. at 221 (quotation marks omitted). “A claim that recites an abstract idea must include ‘additional features’ to ensure ‘that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].’” *Id.* (alterations in original) (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 PTO recently published revised guidance on the application of § 101. *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Guidance”). Under the 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 activity such as a fundamental economic practice, or mental processes); and
- (2) additional elements that integrate the judicial exception into a practical application (*see* Manual of Patent Examining Procedure (“MPEP”) § 2106.05(a)–(c), (e)–(h)).

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.

See Guidance, 84 Fed Reg. at 54, 56.

The U.S. Court of Appeals for the Federal Circuit has explained that “the ‘directed to’ inquiry applies a stage-one filter to claims, considered in light of the [S]pecification, based on whether ‘their character as a whole is directed to excluded subject matter.’” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016) (quoting *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015)). It asks whether the focus of the claims is on a specific improvement in relevant technology or on a process that itself qualifies as an “abstract idea” for which computers are invoked merely as a tool. *See Enfish*, 822 F.3d at 1335–36.

In so doing, as indicated above, we apply a “directed to” two prong test: 1) evaluate whether the claim recites a judicial exception, and 2) if the claim recites a judicial exception, evaluate whether the claim “appl[ies], rel[ies] on, or use[s] the judicial exception in a manner that imposes a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception.” Guidance, 84 Fed. Reg. at 53; *see also* MPEP § 2106.05(a)–(c), (e)–(h).

The Specification states:

DRM usually refers to the increasing use of similar measures for artistic and literary works, or copyrightable content in general. Beyond the existing legal restrictions which copyright law imposes on the owner of the physical copy of a work, most DRM schemes can and do enforce additional restrictions at the

sole discretion of the media distributor (which may or may not be the same entity as the copyright holder).

Specification ¶ 6.

DRM vendors and publishers coined the term *digital rights management* to refer to various types of measures to control access to digital rights, as for example discussed herein, but not limited to those measures discussed herein. DRM may be thought of as a variant of mandatory access control wherein a central policy set by an administrator is enforced by a computer system.

Specification ¶ 7.

Understood in light of the Specification, claim 2, recites in pertinent part, abstractions of:

. . . an plurality of available authentication schemes for controlling access to . . . content; and . . . receive a selection of a set of authentication schemes from the plurality of available authentication schemes to be added to a . . . rights management policy for a unit of . . . content, the set of authentication schemes comprising at least a first authentication scheme corresponding to a first set of permissions for the unit of . . . content and a second authentication scheme corresponding to a second set of permissions for the unit of . . . content, . . . associate the set of authentication schemes in the . . . rights management policy with the unit of . . . content, receive an authentication request, the authentication request indicating a user is seeking access to the unit of . . . content . . . , authenticate the user in response to the request using at least one of the authentication schemes within the set of authentication schemes in the . . . rights management policy for the unit of . . . content, and based on the at least one of the authentication schemes used to authenticate the user in association with the unit of . . . content, authorize a set of permissions, wherein the first set of permissions for the unit of . . . content is authorized when the first authentication scheme is used to authenticate the user and the second set of permissions for the unit of . . . content is authorized when the second

authentication scheme is used to authenticate the user. Accordingly, the Examiner found that the claims are directed to “an abstract idea of authenticating a user for access to digital content wherein a first set of permissions is granted when a first authentication scheme is used and a second set of permissions is granted when a second authentication scheme is used, which is an idea of itself and a certain method of organizing human activity.” (Final Act. 3).

Consistent with the Examiner’s finding and the intrinsic evidence noted above, we find that claim 2 recites a mental process for authenticating access using a rules based permissions scheme. This is because claim 2 recites, e.g., “a plurality of available authentication schemes for controlling access to . . . content,” “receive a selection of a set of authentication schemes from the plurality of available authentication schemes to be added to a . . . rights management policy for a unit of . . . content,” and “authenticate the user in response to the request using at least one of the authentication schemes within the set of authentication schemes in the . . . rights management policy for the unit of . . . content.” A rules based authentication process for access to a protected content unit such as this, constitutes evaluation and/or judgement, a patent ineligible mental process. *See* Guidance, 84 Fed. Reg. at 52 (citing *Mayo*, 566 U.S. at 71).

In addition, the step of “based on the at least one of the authentication schemes used to authenticate the user in association with the unit of . . . content, authorize a set of permissions,” recites a permissions based license which is a basic element of a commercial or legal interaction, which is also a certain form of a method of organizing human activity—a judicial exception that falls within the purview of the abstract ideas articulated in the recent

Guidance. Guidance, 84 Fed. Reg. at 52. The patent-ineligible end of the spectrum includes commercial and legal interactions. *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014). This finding is also consistent with the finding made by the Examiner and the intrinsic evidence from the Specification.

Turning to the second prong of the “directed to” test, claim 2 only generically requires “a policy server device,” and “an interface.” These components are described in the Specification at a high level of generality. *See Spec.* ¶¶ 16–18, and Fig. 1. We fail to see how the generic recitations of these most basic computer components and/or of a system so integrates the judicial exception as to “impose[] a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception.” Guidance, 84 Fed. Reg. at 53. We also find no indication in the Specification that the claimed invention effects a transformation or reduction of a particular article to a different state or thing.

Thus, we find that the claim 2 recites the judicial exceptions of a mental process and/or a commercial or legal transaction that are not integrated into a practical application.

That the claim does not preempt all forms of the abstraction or may be limited to content accessibility, does not make it any less abstract. *See OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015) (“And that the claims do not preempt all price optimization or may be limited to price optimization in the e-commerce setting do not make them any less abstract.”).

Turning to the second step of the *Alice* analysis, because we find that claim 2 is directed to abstract ideas/judicial exceptions, the claim must

include an “inventive concept” in order to be patent-eligible, i.e., there must be an element or combination of elements sufficient to ensure that the claim in practice amounts to significantly more than the abstract idea itself. *See Alice*, 573 U.S. at 217–18 (quoting *Mayo Collaborative Servs.*, 566 U.S. at 72–73).

Concerning this step the Examiner found the following:

When considering all the claim elements both individually and as an ordered combination, Examiner finds that the claim does not amount to significantly more than the exception. The claim limitations do not include additional elements that are sufficient to amount to significantly more than the judicial exception because the claim limitations simply describe the abstract idea.

Final Act. 4.

We agree with the Examiner. “[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. They do not.

Taking the claim elements separately, the function performed by the computer at each step of the process is purely conventional. Using a computer to receive, associate, authenticate and apply decision criteria to data amounts to electronic data query and retrieval—one of the most basic functions of a computer. All of these computer functions are well-understood, routine, conventional activities previously known to the industry. *See Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016); *see also In re Katz Interactive Call Processing Patent Litig.*, 639 F.3d 1303, 1316 (Fed. Cir. 2011) (“Absent a possible narrower construction of the terms ‘processing,’ ‘receiving,’ and ‘storing,’ . . . those

functions can be achieved by any general purpose computer without special programming”). In short, each step does no more than require a generic computer to perform generic computer functions. The claim does not, for example, purport to improve the functioning of the computer itself. In addition, as we stated above, the claim does not effect an improvement in any other technology or technical field. The Specification spells out different generic equipment and parameters that might be applied using this concept and the particular steps such conventional processing would entail based on the concept of information access under different scenarios (*see, e.g., See Spec.* ¶¶ 16–18, and Fig. 1). Thus, claim 2 at issue amounts to nothing significantly more than instructions to apply the abstract idea using some unspecified, generic computer. Under our precedents, that is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 573 U.S. at 225–226.

Considered as an ordered combination, the computer components of Appellant’s claim 2 adds nothing that is not already present when the steps are considered separately. The sequence of data reception-analysis (receive, associate, authenticate, and apply decision criteria to data) and storing is equally generic and conventional or otherwise held to be abstract. *See Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014) (sequence of receiving, selecting, offering for exchange, display, allowing access, and receiving payment recited an abstraction), *Inventor Holdings, LLC v. Bed Bath & Beyond, Inc.*, 876 F.3d 1372, 1378 (Fed. Cir. 2017) (holding that sequence of data retrieval, analysis, modification, generation, display, and transmission was abstract), *Two-Way Media Ltd. v. Comcast Cable Commc’ns, LLC*, 874 F.3d 1329, 1339 (Fed. Cir. 2017) (holding

sequence of processing, routing, controlling, and monitoring was abstract). The ordering of the steps is, therefore, ordinary and conventional.

We have reviewed all the arguments that Appellant has submitted concerning the patent eligibility of the claims before us that stand rejected under 35 U.S.C. § 101. (Appeal Br. 7–21, Reply Br. 2–8). We find that our analysis above substantially covers the substance of all the arguments, which have been made. But, for purposes of completeness, we will address various arguments in order to make individual rebuttals of same.

Appellant argues: “Rather than characterizing each claim feature as different abstract ideas, the Examiner must consider whether, on [its] face, the claim, when considered as a whole, is directed to an abstract idea.” (Appeal Br. 10).

Although we agree with Appellant that the claim must be read, as a whole, we nevertheless find, on balance, that claim 2 is directed to at least one of a commercial transaction and/or a mental process as specified above with respect to our “directed to” findings. As found *supra*, claim 2 only includes the following generically recited device limitations: “a policy server device,” and “an interface.” What remains in the claim after disregarding these device limitations, is abstractions, e.g., a commercial or legal transaction and/or a mental process, the reasoning for each has been established above in our “directed to” analysis. “[A] claim for a *new* abstract idea is still an abstract idea.” *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (Fed. Cir. 2016) (citing *Mayo*, 566 U.S. at 90).

Citing to *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016), Appellant argues, “[h]ere, the pending claims are similarly directed to a specific implementation of a solution to a problem in the software arts and,

thus, are not directed to an abstract idea. Specifically, the claims address a problem with electronically controlling access to and use of digital content.” (Appeal Br. 12). We are unpersuaded by the Appellant’s argument that its claims are directed to an improvement in computer technology or even software arts like that of claim 17 in *Enfish*, and therefore are patent eligible. In *Enfish*, the invention at issue was directed at a wholly new type of logical model for a computer database: a self-referential table that allowed the computer to store many different types of data in a single table and index that data by column and row information. *Enfish*, 822 F.3d at 1330–32. In finding the claims “not directed to an abstract idea,” but “to a specific improvement to the way computers operate,” the Federal Circuit noted that “the claims are not simply directed to *any* form of storing tabular data, but instead are specifically directed to a *self-referential* table for a computer database.” *Enfish*, 822 F.3d at 1336–37 (emphasis in original). We find nothing in the claims before us arising to this level of technical improvement in the claimed “a policy server device,” and “an interface.” Instead, we find the claims are focused on authorizing user access to a protected content unit. Claim 2 simply recites functional results to be achieved by generic devices. *See, e.g., Content Extraction and Transmission LLC v. Wells Fargo Bank, Nat’l Ass’n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014).

Appellant maintains the claims cover a solution to a problem in the software arts without providing evidence that they are improvements in the computer as contrasted with a rules based mental permission process. (*See* Appeal Br. 12–13). Instead, Appellant appears to be relying on attorney argument alone. At best, the Specification describes only a desired result without a written description of the means by which the result is achieved,

e.g., “all requested authentication schemes 360 have equal priority and the reader application 140 is free to choose the most appropriate scheme.” Specification ¶ 25. Hence, even the asserted improvement is, at best, an improvement to the abstract idea. “No matter how much of an advance in the . . . field the claims recite, the advance lies entirely in the realm of abstract ideas, with no plausibly alleged innovation in the non-abstract application realm.” *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1163 (Fed. Cir. 2018). Although machine based entities are by definition in some sense technological, their use has become so notoriously settled that merely invoking them is no more than abstract conceptual advice to use well known technology for its intended purpose. *See In re TLI Commc’ns LLC Pat. Litig.*, 823 F.3d 607, 612–13 (Fed. Cir. 2016) (Using a generic telephone for its intended purpose was a well-established “basic concept” sufficient to fall under *Alice* step 1.).

Citing to *BASCOM Global Internet v. AT&T Mobility LLC*, 827 F.3d 1341, 1350 (Fed. Cir. 2016), Appellant asserts, “an inventive concept can be found in the non-conventional and non-generic arrangement of known, conventional pieces.” (Appeal Br. 15). But, Appellant’s reliance on *BASCOM* is misplaced. In *BASCOM*, the Federal Circuit determined that the claimed installation of a filtering tool at a specific location, remote from the end-users with customizable filtering features specific to each end user, provided an inventive concept in that it gave the filtering tool both the benefits of a filter on a local computer and the benefits of a filter on the ISP server. *BASCOM*, 827 F.3d at 1350. The court, thus, held that the second step of the *Mayo/Alice* framework was satisfied because the claimed invention “represents a ‘software-based invention[] that improve[s] the

performance of the computer system itself.” *BASCOM*, 827 F.3d at 1351 (stating that like *DDR Holdings*, where the patent “claimed a technical solution to a problem unique to the Internet,” the patent in *BASCOM* claimed a “technology-based solution . . . to filter content on the Internet that overcomes existing problems with other Internet filtering systems . . . making it more dynamic and efficient”) (internal citations omitted).

Here, Appellant does not identify, and we do not find, any improvement to computer technology analogous to the ordered combination described in *BASCOM* or any additional element or elements recited in claim 2 that yield an improvement in the functioning of a computer, or an improvement to another technology or technical field. Instead, Appellant again appears to be relying on attorney argument alone. To the extent Appellant is arguing that the generically recited “a policy server device,” and “an interface” are additional elements constituting an inventive concept, such features cannot constitute the “inventive concept.” “[M]erely requir[ing] generic computer implementation[] fail[s] to transform that abstract idea into a patent-eligible invention.” *Alice*, 573 U.S. at 221.

We further fail to see the similarities asserted by Appellant (Appeal Br. 14–15) between the claims on appeal here and those adjudicated in *DDR Holdings, LLC v. Hotels.com, L.P.* 773 F.3d 1245 (Fed. Cir. 2014). In *DDR Holdings*, the court evaluated the eligibility of claims “address[ing] the problem of retaining website visitors that, if adhering to the routine, conventional functioning of Internet hyperlink protocol, would be instantly transported away from a host’s website after ‘clicking’ on an advertisement and activating a hyperlink.” *DDR Holdings*, 773 F.3d at 1257. There, the court found that the claims were patent eligible because

they transformed the manner in which a hyperlink typically functions to resolve a problem that had no “pre-Internet analog.” *DDR Holdings*, 773 F.3d at 1258. In contrast, the problem to be resolved in the case on appeal here is addressing “a security risk and a threat to the value of copyrighted material contained in the media.” Spec. ¶ 6. This is a problem related to an interaction between parties to a commercial transaction, and not to an innovation in technology, such as an improvement in hyperlink functions.

Appellant lists various claim limitations (Appeal Br. 17, 20) as examples of such improvements without providing evidence that they are improvements in the computer as contrasted with commercial interactions. Specifically Appellant argues,

the policy server device controls access to the digital content by associating a unit of digital content with a set of authentication schemes in a digital rights management policy that includes a first authentication scheme for authorizing a first set of permissions and a second authentication scheme for authorizing a second set of permissions and authorizing permissions in accordance with whether the first authentication scheme or second authentication scheme is used.

(Appeal Br. 18).

We disagree with Appellant because Appellant’s broadly claimed sequence of information analysis and output (receive, associate, authenticate, and apply decision criteria to data), which focuses on the result rather than the technical details of its implementation, is generic and conventional and is similar to language otherwise held to be abstract (*see Ultramercial, Inc.*, 772 F.3d at 715 (sequence of receiving, selecting, offering for exchange, display, allowing access, and receiving payment recited an abstraction)).

Appellant also argues, “[t]hese features [listed limitations of the independent claims] do not appear in any widely known industry references, standards, or other publications, and the Office has not provided any evidence supporting the contrary.” (Appeal Br. 20).

First, “[t]he ‘novelty’ of any element or steps in a process, or even of the process itself, is of no relevance in determining whether the subject matter of a claim falls within the § 101 categories of possibly patentable subject matter.” *Diamond v. Diehr*, 450 U.S. 175, 188–89 (1981). Also, the Federal Circuit in *Berkheimer v. HP, Inc.*, 881 F.3d 1360, 1368 (Fed. Cir. 2018) made clear that “not every § 101 determination contains genuine disputes over the underlying facts material to the § 101 inquiry.” In fact, the Federal Circuit in *Berkheimer* did not require evidentiary support for independent claim 1 because “[t]he limitations [of claim 1] amount to no more than performing the abstract idea of parsing and comparing data with conventional computer components.” *Berkheimer*, 881 F.3d at 1370.

Appellant’s other arguments, including those directed to now-superseded USPTO guidance, have been considered but are not persuasive of error. (*See* 2019 Revised Guidance, 84 Fed. Reg. at 51 (“Eligibility-related guidance issued prior to the Ninth Edition, R–08.2017, of the MPEP (published Jan. 2018) should not be relied upon.”))).

Accordingly, because all claims stand or fall with representative claim 2, and are directed to an abstract idea and do not present an “inventive concept,” we sustain the Examiner’s determination that they are directed to ineligible subject matter under 35 U.S.C. § 101. *Cf. LendingTree, LLC v. Zillow, Inc.*, 656 F. App’x 991, 997 (Fed. Cir. 2016) (“We have considered all of Lending Tree’s remaining arguments and have found them

unpersuasive. Accordingly, because the asserted claims of the patents in suit are directed to an abstract idea and do not present an ‘inventive concept,’ we hold that they are directed to ineligible subject matter under 35 U.S.C. § 101.”).

For the reasons identified above, we determine there are no deficiencies in the Examiner’s prima facie case of patent ineligibility of the rejected claims. Therefore, we will sustain the Examiner’s § 101 rejection of claims 2, 10, 17, 29–33, 35–38, and 40–46.

35 U.S.C. § 103(a) REJECTIONS

Claims 2, 10, 17, 29–33, 35–38, and 40–46 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Chiviendacz in view of Igarashi.

Each of independent claims 2, 10, and 41 requires, in one form or another, “the set of authentication schemes comprising at least a first authentication scheme corresponding to a first set of permissions for the unit of digital content and a second authentication scheme corresponding to a second set of permissions for the unit of digital content.” Appeal Br. 29–30, 33.

The Examiner found, concerning these limitations, that Igarashi discloses, “the set of authentication schemes comprising at least a first authentication scheme (first authentication code, see [0080]) corresponding to a first set of permissions (peruse/access, see [0080]) for the unit of digital content (image data, see [0080]) and a second authentication scheme (second authentication code, see [0082-0083]) corresponding to a second set of permissions (moving/copying, see [0083]) for the unit of digital content.”

(Final Act. 8).

Appellant argues the following:

The Examiner suggests that Igarashi's disclosure of using the first and second codes to first allow a user to peruse reduced images and then to authorize use of additional services teaches the claimed first authentication scheme and the second authentication scheme. The first and second authentication codes in Igarashi, however, are the same authentication scheme: a combination of an authentication code and a password. What is actually entered by the user when utilizing the code-and-password authentication scheme will determine the permissions granted, such as viewing reduced images or use of additional services. Accordingly, Igarashi merely teaches use of a single authentication scheme with the scheme having different substance (different codes and passwords) in different instances to provide different permissions. Using the same type of authentication scheme for different permissions fails to provide different levels of security that may be utilized with different authentication schemes. Accordingly, Igarashi does not teach a first authentication scheme corresponding to a first set of permissions for a unit of digital content and a second authentication scheme corresponding to a second set of permissions for the unit of digital content, as recited by the claims.

(Appeal Br. 26–27).

We agree with Appellant. According to the Specification at paragraph 16, “[a]n authentication scheme may employ any technology accepted by a policy server 110 as a means to authenticate the identity of an end user.” “The reader application 140 may support [] different authentication schemes using, for example but not by way of limitation, biometric devices, Kerberos tickets, tokens, or passwords. Biometric authentication may include fingerprint identification or retinal scan identification.” Specification ¶ 17. As such, it is clear from the

Specification each scheme constitutes a different technology, i.e., token versus password. At best, Igarashi discloses, “enter[ing] the above-mentioned new authentication code and the password.” Igarashi ¶ 83. But, both a code and password do not constitute respective first and second permissions as required by the independent claims. Therefore, we will not sustain the Examiner’s obviousness rejection of independent claims 2, 10, and 41.

Because claims 17, 29–33, 35–38, 40, 42–46 depend from one of claims 2, 10, and 41, and because we cannot sustain the Examiner’s obviousness rejection of claims 2, 10, and 41, the Examiner’s obviousness rejection of these dependent claims likewise cannot be sustained.

CONCLUSION

We conclude the Examiner did not err in rejecting claims 2, 10, 17, 29–33, 35–38, and 40–46 under 35 U.S.C. § 101.

We conclude the Examiner erred in rejecting claims 2, 10, 17, 29–33, 35–38, and 40–46 under 35 U.S.C. § 103.

Because we have affirmed at least one ground of rejection with respect to each claim on appeal, the Examiner’s decision is affirmed. *See* 37 C.F.R. § 41.50(a)(1).

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
2, 10, 17, 29–33, 35–38,	101	Eligibility	2, 10, 17, 29–33, 35–	

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40-46			38, 40-46	
2, 10, 17, 29-33, 35-38, 40-46	103	Chiviendacz, Igarashi		2, 10, 17, 29-33, 35-38, 40-46
Overall Outcome			2, 10, 17, 29-33, 35-38, 40-46	

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. § 1.136(a)(1)(iv).

AFFIRMED