



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/206,502	03/12/2014	Adam Hiatt	46XK-219505	5920
133759	7590	02/05/2020	EXAMINER	
Sheppard Mullin Richter & Hampton LLP 650 Town Center Drive, 10th Floor Costa Mesa, CA 92626			VETTER, DANIEL	
			ART UNIT	PAPER NUMBER
			3628	
			NOTIFICATION DATE	DELIVERY MODE
			02/05/2020	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

SheppardMullin_Pair@firsttofile.com
dmipdocketing@sheppardmullin.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ADAM HIATT, JOHN PAUL SHAY,
YANN SCHWERMER, and BEN YACO

Appeal 2018-002511
Application 14/206,502
Technology Center 3600

Before STEFAN STAICOVICI, BENJAMIN D. M. WOOD, and
BRADLEY B. BAYAT, *Administrative Patent Judges*.

STAICOVICI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant¹ appeals under 35 U.S.C. § 134(a) from the Examiner’s decision in the Final Office Action (dated Jan. 13, 2017, hereinafter “Final Act.”) rejecting claims 1–20, 33, and 34.² We have jurisdiction over this appeal under 35 U.S.C. § 6(b).

¹ We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Reso Holdings, Inc. is identified as the real party in interest in Appellant’s Appeal Brief (filed July 24, 2017, hereinafter “Appeal Br.”). Appeal Br. 2.

² Claims 21–32 are canceled. *See* Appeal Br. 50 (Claims App.).

SUMMARY OF DECISION

We AFFIRM.

INVENTION

Appellant's invention is directed "to a system and method for automated reservation management." Spec. para. 1.

Claims 1 and 11 are independent. Claim 11 is illustrative of the claimed invention and is reproduced below (with reference indicators added in brackets):

11. A method for automatically identifying new types of service requests and facilitating booking of service events based on amounts of time between previous service events, the method being implemented in a computer system comprising one or more physical processors executing one or more computer program instructions which, when executed, perform the method, the method comprising:

[a] generating, by the one or more physical processors, an electronic user interface comprising a user interactive element configured to receive an addition, a removal, or an edit of an entry in a service event list;

[b] receiving, by the one or more physical processors, from a user, via the user interactive element, event information for an event to be included in a first calendar associated with the user, wherein the event is not indicated as a service event by the user;

[c] determining, by the one or more physical processors, that the event is a service event of a first service event type based on the event information for the event received from the user;

[d] adding, by the one or more physical processors, the first service event type to a list of managed service event types for the user;

[e] determining, by the one or more physical processors, (i) a first amount of time between a first previous service event of the first service event type that was scheduled for the user and a second previous service event of the first service event type that was scheduled for the user, and (ii) a second amount of time between the second previous service event and a third previous service event of the first service event type that was scheduled for the user;

[f] determining, by the one or more physical processors, a time interval between service events of the first service event type based on (i) the first amount of time and (ii) the second amount of time;

[g] predicting, by the one or more physical processors, a need for a first service event of the first service event type for the user based on (i) the time interval and (ii) at least one of a date of a previous service event of the first service event type that was scheduled for the user or a time of the previous service event;

[h] determining, by the one or more physical processors, scheduling information for the first service event based on the predicted need for the first service event, a first calendar associated with the user, and a second calendar associated with a vendor that provides service events of the first service event type, wherein the scheduling information comprises at least one of a first date for the first service event based on the time interval and the date of the previous service event of the first service event type or a first time for the first service event based on the time interval and the time of the previous service event of the first service event type;

[j] determining, by the one or more physical processors, a reservation for the first service event based on the need prediction and the scheduling information;

[k] providing, by the one or more physical processors, to the user, a request to accept the reservation; and

[l] providing, by the one or more physical processors, based on the user accepting the reservation, a confirmation of the reservation to the user and the vendor.

REJECTIONS

- I. The Examiner rejects claims 1–20, 33, and 34 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter.
- II. The Examiner provisionally rejects claims 1–20, 33, and 34 on the ground of non-statutory double patenting as being unpatentable over

claims 1–13, 15–28, and 30–32 of copending U.S Application No. 14/206,569.³

- III. The Examiner rejects claims 1–3, 11–13, and 33 under 35 U.S.C. § 103 as being unpatentable over Behrens⁴ and Elwell.⁵
- IV. The Examiner rejects claims 4, 9, 14, and 19 under 35 U.S.C. § 103 as being unpatentable over Behrens, Elwell, and Camp.⁶
- V. The Examiner rejects claims 5 and 15 under 35 U.S.C. § 103 as being unpatentable over Behrens, Elwell, Grosz,⁷ and Becker.⁸
- VI. The Examiner rejects claims 6 and 16 under 35 U.S.C. § 103 as being unpatentable over Behrens, Elwell, and Katz.⁹
- VII. The Examiner rejects claims 7, 8, 17, and 18 under 35 U.S.C. § 103 as being unpatentable over Behrens, Elwell, and Srimuang.¹⁰
- VIII. The Examiner rejects claims 10 and 20 under 35 U.S.C. § 103 as being unpatentable over Behrens, Elwell, Camp, and Pavlov.¹¹
- IX. The Examiner rejects claim 34 under 35 U.S.C. § 103 as being unpatentable over Behrens, Elwell, and Meltzer.¹²

³ The rejection of claims 31 and 32 is moot as these claims are canceled. *See* Final Act. 14; Appeal Br. 50.

⁴ Behrens et al., US 2010/0191552 A1, published July 29, 2010.

⁵ Elwell et al., US 8,930,820 B1, issued Jan. 6, 2015.

⁶ Camp et al., US 2011/0301985 A1, published Dec. 8, 2011.

⁷ Grosz, US 2015/0019273 A1, published Jan. 15, 2015.

⁸ Becker, US 2004/0267580 A1, published Dec. 30, 2004.

⁹ Katz, US 2007/0083400 A1, published Apr. 12, 2007.

¹⁰ Srimuang, US 2003/0061087 A1, published Mar. 27, 2003.

¹¹ Pavlov, US 2008/0114629 A1, published May 15, 2008.

¹² Meltzer et al., US 2014/0310045 A1, published Oct. 16, 2014.

ANALYSIS

Rejection I

Section 101 states, “[w]hoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.” 35 U.S.C. § 101. However, the Supreme Court has “long held that this provision contains an important implicit exception: [L]aws of nature, natural phenomena, and abstract ideas are not patentable.” *E.g.*, *Alice Corp. Pty. Ltd. 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*. *See 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.” *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 (1854))); and manufacturing

Appeal 2018-002511
Application 14/206,502

flour (*Benson*, 409 U.S. at 69 (citing *Cochrane v. Deener*, 94 U.S. 780, 785 (1876))).

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.* ((alteration in the 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 has published revised guidance on the application of § 101. *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019) (hereinafter “2019 Guidance”). Under Step 2A of 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 activity 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 look, in Step 2B, 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.

Claims 1 and 11

Step 1 – Statutory Category

We first determine whether independent claims 1 and 11 recite one or more of the enumerated statutory classes of subject matter, i.e., process, machine, manufacture, or composition of matter, eligible for patenting under 35 U.S.C. § 101. Here, independent claims 1 and 11 recite a system (i.e., a “machine”) and a method (i.e., a “process”), respectively. *See* Appeal Br. 41, 46 (Claims App.). Thus, we agree with Appellant that independent claims 1 and 11 recite recognized statutory categories under 35 U.S.C. § 101. *See id.* at 9.

Step 2A, Prong 1 – Recitation of Judicial Exception

We next look to whether independent claims 1 and 11 recite any judicial exceptions, including certain groupings of abstract ideas, i.e., mathematical concepts, certain methods of organizing human activity, or mental processes.

In determining that independent claims 1 and 11 are directed to a judicial exception to patent eligibility the Examiner determines that the claims are directed to:

[T]he abstract idea of booking service events for a user based on various criteria including a previous time and location . . . which is a method of organizing human activities (because it purports to manage and plan the future undertakings and calendar scheduling of persons) involving basic economic principles (e.g., scheduling services, executing [] payment transaction[s]) and mathematical correlations (e.g., comparing amounts and intervals of time.

Appeal 2018-002511
Application 14/206,502

Final Act. 4. The Examiner explains that claims 1 and 11 are similar to the claims held ineligible in *In re Maucorps*, 609 F.2d 481 (CCPA 1979), *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1371 (Fed. Cir. 2015) and *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1098 (Fed. Cir. 2016). *Id.*; Reply Br. 4–7.¹³

In response, Appellant asserts that “the Examiner has not analyzed the claims’ character as a whole, and has made a high level abstraction of the claims, untethered from their actual language.” Appeal Br. 11 (citing *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016)). According to Appellant, “[t]he character of the claims, as a whole, is not directed to, nor recites, excluded subject matter, but is instead directed to a concept inextricably tied to *computer technology* and distinct from the types of concepts found to be abstract.” *Id.* at 10 (emphasis added).

We agree with the Examiner that independent claims 1 and 11 merely “describe[] organizing and planning the future activities of *human beings*” (see Final Act. 2 (emphasis added)), which constitutes “organizing human *commercial relationships*” (see Ans. 6 (emphasis added)).¹⁴ Such a description is consistent with the 2019 Guidance, which describes “[c]ertain methods of organizing human activity” in terms of “commercial or legal interactions.” 2019 Guidance 52; see also October 2019 Update: Subject Matter Eligibility (“2019 Update”) at 4–5. The 2019 Update further describes “commercial or legal interactions” to include “subject matter relating to agreements in the form of contracts, legal obligations, advertising, marketing or sales activities or behaviors, and business relations.” 2019 Update at 5. Here, scheduling and booking a vendor to perform a service

¹³ Appellant’s Reply Brief, filed Jan. 9, 2018.

¹⁴ Examiner’s Answer, dated Nov. 9, 2017.

Appeal 2018-002511
Application 14/206,502

event, as per independent claims 1 and 11, requires forming a commercial interaction in terms of, at least, business relations between the user and the vendor that require at least contracts and legal obligations. As such, the Examiner is correct that “event scheduling and management . . . is an abstract commercial endeavor that seeks to organize the future activities of human beings.” Ans. 6. Accordingly, independent claims 1 and 11 are directed to commercial interactions, which qualify as an abstract idea, i.e., organizing human activity.

We further note that absent the use of the claimed “physical processors,” i.e., computer, the Examiner is correct that “[t]here is no reason . . . why a human could not *mentally* determine a service event type for booking an event.” Ans. 5 (emphasis added). A claim recites a mental process when the claim encompasses acts people can perform using their minds or pen and paper. *See, e.g., CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1372–73 (Fed. Cir. 2011) (determining that a claim whose “steps can be performed in the human mind, or by a human using a pen and paper” is directed to an unpatentable mental process). This is true even if the claim recites that a generic computer component, i.e., “physical processors,” perform the acts. *See, e.g., Versata Development Group, Inc. v. SAP America, Inc.*, 793 F.3d 1306, 1335 (Fed. Cir. 2015) (“Courts have examined claims that required the use of a computer and still found that the underlying, patent-ineligible invention could be performed via pen and paper or in a person’s mind.”); *see also* 2019 Guidance 52 n.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.”).

In this case, absent the use of “physical processors” that “generate . . . an electronic user interface,” a person (i.e., user) can identify a new service event and

schedule and book a vendor to perform the service event by performing the recited steps of claim 11 as follows:

- (1) manually adding, deleting, or editing an entry in a service event list (limitation [a]);
- (2) mentally receiving event information from a user requesting a service event (limitation [b]);
- (3) based on the event information mentally determining that the requested service event is a service event of the first service event type (limitation [c]);¹⁵
- (4) manually adding the first service event type to a user's list of managed service event types (limitation [d]);
- (5) calculating (mental process) amounts of time and a time interval between previous service events (limitations [e] and [f]);
- (6) mentally predicting a need for a future service event based on the time interval and the date or time of a previous service event that was scheduled for the user (limitation [g]);
- (7) manually scheduling the first service event based on the predicted need, the user's calendar, and the vendor's calendar (limitation [h]);

¹⁵The Examiner is correct that “from a calendar record that simply contains a name, a person could determine that the event was a haircut-type appointment if mental analysis determined that the name is the name of the person's barber.” Ans. 5; Reply Br. 4; *see also Electric Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016) (explaining that the Federal Circuit has “treated analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, as essentially mental processes within the abstract-idea category” and determining that the claims at issue involve such steps).

(8) manually making a reservation and requesting an acceptance of the reservation from the user (limitations [j] and [k]); and

(9) mentally confirming the user's acceptance to the vendor (limitation [l]).

As such, we have considered each of the specific limitations of independent claims 1 and 11, and each claim recites mere instructions that customers (users) can perform using their minds or pen and paper to identify a service event and book a vendor to perform the service event. Appellant does not present persuasive arguments or evidence that the steps of claims 1 and 11 cannot be performed practically in the human mind using pen (or pencil) and paper.

Accordingly, for the foregoing reasons, because we determine that independent claims 1 and 11 recite certain methods of organizing human activity and mental processes that can be performed practically in the human mind using pen (or pencil) and paper, we conclude that claims 1 and 16 recite an abstract idea, and, thus, we proceed to Prong 2 of Step 2A.

Step 2A, Prong 2 – Integrated Into a Practical Application

If a claim recites a judicial exception, then, in *Prong 2*, we determine whether the recited judicial exception is integrated into a practical application of that exception by: (a) identifying whether there are any additional elements recited in the claim *beyond the judicial exception(s)*; and (b) evaluating those additional elements individually and in combination to determine whether they integrate the exception into a practical application. *See* 2019 Guidance, 84 Fed. Reg. at 54–55. This evaluation requires an additional element or a combination of additional elements in the claim to apply, rely on, or use the judicial exception in a manner that imposes a meaningful limit on the judicial exception, such that the

Appeal 2018-002511
Application 14/206,502

claim is more than a drafting effort designed to monopolize the exception. *See id.* at 54.

Appellant contends that “the character of the claims as a whole, in light of the Specification, is directed to various features and functionality afforded by a comprehensive computer platform that provides a *technical solution* for managing a list of service events . . . for a user.” Appeal Br. 11 (emphasis added).

According to Appellant, the functionality of “automatically determin[ing] that an event is a service event of a first service event type based on event information received from a user even when the event itself is not indicated as a service event by the user,” as per limitations [b] and [c] of claim 11, “represents a technological improvement in *computer intelligence* by providing the ability to determine service event types even if not specified by a user.” *Id.* at 12 (emphasis added).

Hence, Appellant asserts that claims 1 and 11 are distinguishable from the claims in *In re Maucorps, Intellectual Ventures I LLC, and FairWarning IP, LLC*. *Id.* at 12–16. In addition, Appellant contends that claims 1 and 11 are patent-eligible under *McRO, Inc. v. Bandai Namco Games Amer. Inc.*, 837 F.3d 1299 (Fed. Cir. 2016) and *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014). *Id.* at 16–21; Reply Br. 6–8.

We are not persuaded by Appellant’s arguments regarding the claims in *In re Maucorps, Intellectual Ventures I LLC, and FairWarning IP, LLC* because we discern nothing in either of claims 1 or 11 that improves functionality of a computer, i.e., “computer intelligence.” The Specification makes clear that the “physical processors” recited in claims 1 and 11 are generic computing components, which do not invoke particular hardware or software and are described by their function, i.e., “processors that are configured to execute computer program components.” *See Spec.* paras. 144–146, 151 (“processor 102 may include one or more of a digital processor, an analog processor, a digital

Appeal 2018-002511
Application 14/206,502

circuit designed to process information, an analog circuit designed to process information, a state machine, and/or other mechanisms for electronically processing information.”).

In particular, we note that the “technological improvement in computer intelligence” that Appellant alludes to, namely, limitations [b] and [c] of claim 11, in fact, recite a result without specifying a way of achieving the result. *See SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1167 (Fed. Cir. 2018) (Eligible “claims . . . transform[ed] a claim from one claiming only a result to one claiming a way of achieving it.”). At most, claims 1 and 11 improve the user (customer) experience, and, thus, the recited features are not problems that are unique or limited to computer environments. *See Spec. paras. 3–4* (the claimed invention overcomes drawbacks of conventional reservation tools). In other words, although each of claims 1 and 11 is implemented using a computer and specific computer operations and structures, these specifics of the claimed invention find direct analogs in a *manual* implementation, as discussed *supra*. *See Trading Techs. Int’l, Inc. v. IBG LLC*, 921 F.3d 1084, 1090 (Fed. Cir. 2019) (“This invention makes the *trader* faster and more efficient, not the computer. This is not a technical solution to a technical problem.”).

We also do not agree with Appellant’s reliance on *McRO* and *DDR Holdings*. *See Appeal Br. 16–21; Reply Br. 6–8*. In contrast to *McRO*, Appellant does not identify specific rules that act in the same way as the specific rules enabling the computer in *McRO* to generate the result of a sequence of animated characters. *McRO*, 837 F.3d at 1313–16. In other words, here, we have none of the claimed specificity of technological improvement the Federal Circuit found present in the invention of *McRO*.

As to *DDR Holdings*, the claims involved web-page displays with “at least one active link associated with a commerce object associated with a

Appeal 2018-002511
Application 14/206,502

buying opportunity of a selected one of a plurality of merchants.” *DDR Holdings*, 773 F. 3d at 1249. However, here, the Examiner is correct in that “booking a service event, even when considering unspecified event types, is [not] a challenge particular to the Internet or any other technology.” Ans. 7. In other words, the problem of identifying and scheduling service events based on user and vendor information, as per independent claims 1 and 11, does not specifically arise from a technology, such as computers or computer networks. Hence, neither *McRO* nor *DDR Holdings* applies here because as the Examiner correctly notes, “[t]he claims only manipulate abstract data elements” and “do not present improvements to another technological field or the functioning of the computer itself.” Final Act. 5.

As such, for the foregoing reasons, claims 1 and 11 use the ordinary capabilities of a computer to *automate* what previously has been done by a user (customer). This is not enough to integrate the underlying abstract idea into a practical application, as “relying on a computer to perform routine tasks more quickly or more accurately is insufficient to render a claim patent eligible.” *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015). We agree with the Examiner that the recited “claims merely use computers in a routine fashion to implement the abstract process.” Ans. 6 (citing *Smart Systems Innovations v. Chicago Transit Authority*, 873 F.3d 1364, 1372–73 (Fed. Cir. 2017)) (“The claims are not directed to a combined order of specific rules that improve any technological process, but rather invoke computers in the collection and arrangement of data. Claims with such character do not escape the abstract idea exception under *Alice* step one.”); *see also* Reply Br. 6.

Thus, we determine that the recited “additional element[s] merely recite[] the words ‘apply it’ (or an equivalent) with the judicial exception, or merely includes instructions to implement an abstract idea on a computer, or merely uses

Appeal 2018-002511
Application 14/206,502

a computer as a tool to perform an abstract idea.” 2019 Guidance 55.

Accordingly, Appellant’s claims 1 and 11:

- (1) do not improve the functioning of a computer or other technology;
- (2) are not applied with any particular machine;
- (3) do not affect a transformation of a particular article to a different state;
- (4) do not add more than insignificant extra-solution activity; and
- (5) are not applied in any meaningful way beyond generally linking the use of the judicial exception to a particular technological environment. *See* MPEP § 2106.05(a)–(c), (f), (g).

Lastly, Appellant argues that claims 1 and 11 “do not tie up an idea of itself nor scheduling [service] events.” *See* Reply Br. 3; *see also* Appeal Br. 17–18. We are not persuaded by such an argument because although “preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015). “Where a patent’s claims are deemed only to disclose patent ineligible subject matter under the *Mayo* [*Alice*] framework, as they are in this case, preemption concerns are fully addressed and made moot.” *Id.*

In conclusion, we are not persuaded of error in the Examiner’s determination that claims 1 and 11 are directed to an abstract idea, and we find that the claimed additional elements do not integrate the abstract idea into a practical application.

Step 2B – Well-Understood, Routine, Conventional Activity

Having determined that claims 1 and 11 recite a judicial exception, and do not integrate that exception into a practical application, under *Step 2B* we consider

Appeal 2018-002511
Application 14/206,502

whether the claims add a specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field. *See* 2019 Guidance 56.

The Examiner finds that “[t]he claims do not include additional elements that are sufficient to amount to significantly more than the judicial exception because there are no meaningful limitations that transform the exception into a patent eligible application.” Final Act. 4–5. According to the Examiner, “[l]ooking at the limitations as an ordered combination adds nothing that is not already present when looking at the elements taken individually.” *Id.*

In response, Appellant argues that similar to the claims in *BASCOM Global Internet Serv., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016), “the instant claims recite significantly more than an alleged abstract idea,” i.e., ““booking service events for a user.”” Appeal Br. 23. According to Appellant, “the ordered combination of features” constitutes “a technological improvement in computer intelligence to be able to identify new service event types even if not specified by the user.” *Id.* (citing limitations from claim 1 that correspond to limitations [b] and [c] from claim 11). Appellant further contends that like the claims in *Amdocs (Isr.) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1291, 1300–01 (Fed. Cir. 2016), “the instant claims are tied to the particular architecture described in the instant [S]pecification,” namely, “the architecture of computer system 100 and the architecture of its interaction with client computing devices 30 and vendor computing devices 40.” Appeal Br. 24–25. Thus, Appellant contends that the features recited by each of independent claims 1 and 11 “individually or in combination, do not comprise well-understood, routine, and conventional activities of a computer previously known to the industry for at least the reason that the foregoing features recited by the claims are not a mere conventional use of traditional computer functionality.” *Id.* at 27 (emphasis omitted).

We are not persuaded that the Examiner erred in determining that the elements of claims 1 and 11, considering all elements both individually and as an ordered combination, do not amount to significantly more than the abstract idea itself. As discussed *supra*, identifying and scheduling service events based on user and vendor information, as per independent claims 1 and 11, “do not present improvements to another technological field or the functioning of the computer itself.” Ans. 7. Rather, such features represent “implement[ing] the abstract service event planning functionality on a generic processor.” *Id.*

We further agree with the Examiner that neither *BASCOM* nor *Amdocs* “controls the analysis of Appellant’s claims, as the arguments do not establish that the [claimed] invention contains similar non-conventional elements.” *Id.* The Examiner is correct that “[n]o particular network architecture is claimed,” and, moreover, “[t]he only element other than the abstract idea in the claims is the generic processor on which it is executed, which is used for routine and conventional activities (e.g., storing, retrieving, transmitting data).” *Id.* at 7–8. In particular, Appellant’s Specification describes computer system 100 as “a server, a desktop computer, [a] laptop computer, [a] personal digital assistant, smart phone, and/or any other computing device”; client computing device 30 as “a desktop computer, a laptop computer, a handheld computer, a tablet computing platform, a Netbook, a Smartphone, a gaming console, and/or other computing platforms”; and vendor computing device 40 as “a desktop computer, a laptop computer, a handheld computer, a tablet computing platform, a Netbook, a Smartphone, a gaming console, and/or other computing platforms.” Spec. paras. 144–146. As such, we do not agree with Appellant that “the claimed network architecture is unconventional at least in that it includes an improved computer that communicates with both a vendor’s computer system and a user’s computer

system” as communication between computers or servers is a conventional use of computer networks. Reply Br. 8.

Furthermore, the features Appellant refers to as unconventional (*see* Appeal Br. 26–27)¹⁶ merely recite the identified judicial exception discussed above; these limitations are not “additional elements individually and in combination” that may “provide an inventive concept” amounting to “significantly more than the exception itself.” 2019 Guidance 55–56. Accordingly, claims 1 and 11 fail to add a specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field. Thus, we are not persuaded that claims 1 and 11 are directed to a specific application designed to achieve an improved technological result, as opposed to being directed to merely ordinary functionality of the above-recited additional elements to apply an abstract idea, and, thus, fails to indicate the presence of an inventive concept. Therefore, we conclude that none of the limitations of claims 1 and 11, 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 217–18 (internal quotations omitted) (quoting *Mayo*, 566 U.S. at 79).

In conclusion, for the foregoing reasons, we sustain the rejection of claims 1 and 11 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter.

Claims 2–10, 12–20, 33, and 34

Appellant argues that “[t]he rejection of dependent claims 2-10, 12-20, 33, and 34 under § 101 . . . is improper because the Examiner improperly rejects the

¹⁶ Citing limitations from claim 1 that are similar to limitations [a]–[d] and [g]–[l] of claim 11.

dependent claims without individually addressing each and every one of their recited features.” Appeal Br. 27; Reply Br. 10. Appellant explains that “the Examiner has not provided an explanation as to why each claim is unpatentable sufficient to establish a *prima facie* case with respect to the subject-matter eligibility analysis.” *Id.* at 28. Thus, according to Appellant, “[e]very claim must be examined individually’ and ‘the eligibility of each claim should be evaluated as a whole.” *Id.* (emphasis omitted).

Although we appreciate that the Examiner has not written a separate rejection for each dependent claim, nonetheless, the Examiner did consider each claim when finding that “[t]he limitations of the dependent claims merely set forth further refinements of the abstract idea (e.g., adding information to the calendars-claim 2, using average amounts of time-claim 3, etc.)” Final Act. 4. As such, adding narrowing limitations, as per dependent claims 2–10, 12–20, 33, and 34, that are themselves abstract, does not suffice to transform the claimed abstract idea into patent-eligible subject matter. In other words, dependent claims 2–10, 12–20, 33, and 34 add *nothing beyond* the abstract idea set forth in independent claims 1 and 11, from which these claims depend, respectively. Thus, we agree with the Examiner that “the limitations of the dependent claims merely further refine aspects of the abstract idea without adding significantly more.” Ans. 8. Accordingly, dependent claims 2–10, 12–20, 33, and 34 fail to survive Step 2A, Prong 2, and, for the same reasons, fail to survive Step 2B.

As Appellant provides no substantive explanation as to why any of these dependent claims recites something significantly more than the abstract idea recited in their respective independent claims, dependent claims 2–10, 12–20, 33, and 34 are patent-ineligible.

Rejection II

We do not reach the merits of the Examiner’s *provisional* double patenting rejection because it would be premature to do so at this time, consistent with the holding of *Ex Parte Moncla*, 95 USPQ2d 1884, 1885 (BPAI 2010) (precedential). Moreover, Appellant represents that a terminal disclaimer will be provided when the application underlying this appeal is in condition for allowance. *See* Amdt. 11 (“Applicant will consider filing a Terminal Disclaimer once all remaining rejections are withdrawn.”).¹⁷

Rejection III

Each of independent claims 1 and 11 recites “a service event list” and “a list of managed service event types.” Appeal Br. 41, 46 (Claims App.).

The Examiner finds that Behrens’ paragraphs 124–126 and 217 disclose “a service event list,” paragraphs 91, 112, and 125 disclose “a list of managed service event types,” and paragraphs 112 and 124–126 disclose “a first calendar associated with the user.” *See* Final Act. 6.

Appellant argues that “[n]one of the relied-upon passages, however, appear to teach or suggest a service event list.” Appeal Br. 31. According to Appellant, paragraphs “[0124]-[0126] relate to a user’s ability to select an available appointment from an appointment availability placement, while [paragraph] [0217] of Behrens appears to teach that a calendar may be updated to reflect a booked appointment.” *Id.*

In response, the Examiner takes the position that because “[a] service event list is merely a collection of data records about reservations,” Behrens’ “user is

¹⁷ Appellant’s Amendment, filed Oct. 28, 2016.

Appeal 2018-002511
Application 14/206,502

able to manage their *calendar* information (which contains records of service events) by, e.g., adding an entry for a new event into their *calendar* as required by the claims.” Ans. 9 (emphasis added). In other words, the Examiner finds that Behrens’ calendar constitutes both a service event list and a calendar associated with a user.

As a matter of claim construction, we note that where a claim lists elements separately, the clear implication is that such elements constitute distinct components. *Becton, Dickinson and Co. v. Tyco Healthcare Grp., LP*, 616 F.3d 1249, 1254 (Fed. Cir. 2010) (citing *Gaus v. Conair Corp.*, 363 F.3d 1284, 1288 (Fed. Cir. 2004); *Engel Indus., Inc. v. Lockformer Co.*, 96 F.3d 1398, 1404–05 (Fed. Cir. 1996)). Here, we do not agree with the Examiner that Behrens’ calendar may read on both a service event list (as per limitation [a]) and a calendar associated with a user (as per limitation [b]). Therefore, Behrens fails to disclose a service event list that is distinct from a calendar associated with a user, as called for by each of independent claims 1 and 11.

As the Examiner does not employ Elwell in any manner to remedy the deficiency of Behrens, discussed *supra*, we do not sustain the rejection under 35 U.S.C. § 103 of claims 1–3, 11–13, and 33 as unpatentable over Behrens and Elwell.

Rejections IV–IX

The Examiner’s use of the Camp, Grosz, Becker, Katz, Srimuang, Pavlov, and Meltzer disclosures does not remedy the deficiency of Behrens discussed *supra*. See Final Act. 8–13. Thus, for the same reasons discussed above in Rejection III, we also do not sustain Rejections IV–IX.

CONCLUSION

Claims Rejected	35 U.S.C. §	Reference(s)/ Basis	Affirmed	Reversed
1–20, 33, 34	101	Eligibility	1–20, 33, 34	
1–3, 11–13, 33	103	Behrens, Elwell		1–3, 11–13, 33
4, 9, 14, 19	103	Behrens, Elwell, Camp		4, 9, 14, 19
5, 15	103	Behrens, Elwell, Grosz, Becker		5, 15
6, 16	103	Behrens, Elwell, Katz		6, 16
7, 8, 17, 18	103	Behrens, Elwell, Srimuang		7, 8, 17, 18
10, 20	103	Behrens, Elwell, Camp, Pavlov		10, 20
34	103	Behrens, Elwell, Meltzer		34
Overall Outcome			1–20, 33, 34	

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