# UNITED STATES PATENT AND TRADEMARK OFFICE

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PTOL-90A (Rev. 04/07)

UNITED STATES PATENT AND TRADEMARK OFFICE
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BEFORE THE PATENT TRIAL AND APPEAL BOARD
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*Ex parte* KEIRA BROOKE BARD, JEREMY PAUL CLIFFORD,
SCOTT DALLA VALLE, NATHAN TAD CZYZESWKI,
BASKARAN NADARAJAH, PETER LACKEY,
WAYNE THOMAS SANCHEZ, and BRIAN GEORGE
_____

Appeal 2018-003139
Application 14/223,412
Technology Center 3600
_____

Before MURRIEL E. CRAWFORD, JOSEPH A. FISCHETTI, and
NINA L. MEDLOCK, *Administrative Patent Judges*.

FISCHETTI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant[1] seeks our review under 35 U.S.C. § 134 of the Examiner's
final rejection of claims 1, 6, 7, 14–22, and 27–36.  We have jurisdiction
under 35 U.S.C. § 6(b).  A hearing was held on August 8, 2019.

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[1] We use the word "Appellant" to refer to "Applicant" as defined in
37 C.F.R. § 1.42(a).  Appellant identifies the real party in interest as Capital
One Financial Corporation.

## SUMMARY OF DECISION

We affirm.

## THE INVENTION

Claim 1, reproduced below, is representative of the subject matter on appeal.

1. A computer-implemented method for monitoring electronic financial accounts, the method comprising:

storing, in a database using at least one processor, account information associated with a financial account indicating graduation criteria information and one or more parameters of the financial account;

evaluating, using the at least one processor, an initial statement stage for the financial account by:

determining an initial statement stage for the financial account based on the account information;

accessing graduation criteria information for the initial statement stage from the database;

monitoring first payment information for the financial account comprising at least payment information for the initial statement stage;

determining that the financial account failed to graduate the trial period based at least on the monitored first payment information for the initial stage and the graduation criteria information for the initial statement stage;

recalculating graduation criteria information based at least on the monitored first payment information for the initial stage; and

transforming the recalculated graduation criteria information in the database into subsequent graduation criteria information;

evaluating, using the at least one processor, a subsequent statement stage for the financial account by:

determining a subsequent statement stage for the financial account based on the account information;

accessing the subsequent graduation criteria information from the database derived from the stored recalculated graduation criteria information; and

monitoring second payment information for the financial account comprising at least payment information for the subsequent statement stage for compliance with the lag graduation criteria information; and

reconfiguring, using the at least one processor, the one or more parameters of the financial account based on the monitored second payment information,

wherein the at least one processor is configured to send a message to a computing device associated with the financial account via point-to-point communication.

## THE REJECTION

The following rejection is before us for review.

Claims 1, 6, 7, 14–22, and 27–36, are rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.

FINDINGS OF FACT

We adopt the Examiner's findings as set forth on pages 2–8 in the Final Office Action[1] and on pages 2–11 in the Examiner's Answer, concerning only the 35 U.S.C. § 101 rejection.

ANALYSIS

35 U.S.C. § 101 REJECTION

We will affirm the rejection of claims 1, 6, 7, 14–22, and 27–36 under 35 U.S.C. § 101.

The Appellant argues claims 1, 6, 7, 14–22, and 27–36 as a group (App. Br. 9, 11), and we select claim 1 as the representative claim for this group, and so the remaining claims stand or fall with claim 1. *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: "[l]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*. *Id.* 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." *See id.* at 219

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[1] All references to the Final Office Action refer to the Final Office Action mailed on February 3, 2017.

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

In *Diehr*, the claim at issue recited a mathematical formula, but the Supreme Court held that "[a] claim drawn to subject matter otherwise statutory does not become nonstatutory simply because it uses a mathematical formula." *Diehr*, 450 U.S. at 176; *see also id.* at 191 ("We view respondents' claims as nothing more than a process for molding rubber products and not as an attempt to patent a mathematical formula."). 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.*, *Diehr*, 450 U.S. 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 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 id.* 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:

Credit card products have become so universally well known and ubiquitous that they have fundamentally changed the manner in which financial transactions and dealings are viewed and conducted in society today. Credit card products are most commonly represented by plastic card-like members that are

offered and provided to customers through credit card issuers (such as banks and other financial institutions). With a credit card, an authorized customer or cardholder is capable of purchasing services and/or merchandise without an immediate, direct exchange of cash. With each purchase, the cardholder incurs debt to their credit card account, which the cardholder may thereafter pay upon receipt of a monthly or otherwise periodic statement. In most cases, the cardholder will have the option to either folly pay the outstanding balance or, as a matter of necessity or choice, defer at least a portion or the balance for later payment with accompanying interest or finance charges for the period during which payment of the outstanding debt is deferred (also referred to as a revolving charge credit line).

The preamble states claim 1 is for "monitoring electronic financial accounts." Understood in light of the Specification, claim 1, recites, in pertinent part,

> ...storing, in a database …, account information associated with a financial account indicating graduation criteria information and one or more parameters of the financial account; evaluating, …an initial statement stage for the financial account by: determining an initial statement stage for the financial account based on the account information; accessing graduation criteria information for the initial statement stage from the database; monitoring first payment information for the financial account comprising at least payment information for the initial statement stage; determining that the financial account failed to graduate the trial period based at least on the monitored first payment information for the initial stage and the graduation criteria information for the initial statement stage; recalculating graduation criteria information based at least on the monitored first payment information for the initial stage; and transforming the recalculated graduation criteria information in the database into subsequent graduation criteria information evaluating, …, a subsequent statement stage for the financial account by: determining a subsequent statement stage for the financial account based on the account information; accessing the subsequent graduation criteria information from the database

derived from the stored recalculated graduation criteria information; and monitoring second payment information for the financial account comprising at least payment information for the subsequent statement stage for compliance with the lag graduation criteria information; and reconfiguring,…, the one or more parameters of the financial account based on the monitored second payment information, …to send a message to a computing device associated with the financial account via point-to-point communication.

Accordingly, the Examiner found that the claims are directed to "monitoring financial accounts." (Final Act. 2).

We agree with the Examiner that claim 1 is directed to monitoring financial accounts and further determine, based on the intrinsic evidence listed above, that the claims, more specifically, are directed to providing starter credit card accounts to high risk customers by determining lag graduation data used to rank a group of customers so that various offers for a starter credit card account are presented to each customer, based on their ranking. This is a form of determining credit worthiness which is a fundamental economic principal because it best insures repayment of credit. Thus, claim 1 is directed to a fundamental economic principle which is a certain method of organizing human activity. The patent-ineligible end of the spectrum includes certain methods of organizing human activity. Guidance, 84 Fed. Reg. at 52, *Alice*, 573 U.S. at 220.

In addition, we find that claim 1 is directed to a mental process because claim 1 recites, e.g.,

determining that the financial account failed to graduate the trial period based at least on the monitored first payment information for the initial stage and the graduation criteria information for the initial statement stage;

> recalculating graduation criteria information based at least on the monitored first payment information for the initial stage; and
>
> evaluating, …, a subsequent statement stage for the financial account by:
>
> determining a subsequent statement stage for the financial account based on the account information.

Determining, recalculating, evaluating are concepts performed by the human mind. A concept performed in the human mind, including an evaluation or judgment, is an abstract idea. Guidance, 84 Fed. Reg. at 52 citing *Mayo*, 566 U.S. at 71. *See also CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1373 (Fed. Cir. 2011) (holding that method steps that can be performed in the human mind, or by a human using a pen and paper, are unpatentable mental processes).

Turning to the second prong of the "directed to" test, claim 1 only generically requires a "processor," and "a computing device." These components are described in the Specification at a high level of generality. *See* Spec. ¶¶ 34–38, Figs. 1, 2. 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 claims recite the judicial exceptions of a fundamental economic principle and mental process that are not integrated into a practical application.

That the claims do not preempt all forms of the abstraction or may be limited to monitored payment information does not make them 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 the claims are directed to abstract ideas/judicial exceptions, the claims 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 "that there are no meaningful limitations in the claim that transforms the judicial exception into a patent eligible application such that the claim amounts to significantly more than the judicial exception itself." (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 store, associate, determine, access, recalculate, monitor, and apply decision criteria to data as a result 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

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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 claims do not, for example, purport to improve the functioning of the computer itself. In addition, as we stated above, the claims do 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.*, Spec. ¶ 34, 35). Thus, the claims at issue amount 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 claims add nothing that is not already present when the steps are considered separately. The sequence of data reception-analysis (associate, determine, access, recalculate, monitor, and apply decision criteria to data as a result) 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 Appellant has submitted concerning the patent eligibility of the claims before us that stand rejected under 35 U.S.C. § 101. (App. Br. 9–48, Reply Br. 2–9). 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, "[t]he Examiner's analysis under Step 2A is contrary to the Federal Circuit's guidance." (Appeal Br. 12). Appellant further argues,

> Here, the Examiner merely posits that the judicial exception to which the claims are 'directed to' is 'monitoring financial accounts.' [footnote to Office Action 2]. The Examiner not only fails to describe the scope ascribed to this purported judicial exception, but also fails to establish it as a judicial exception. Instead, the Examiner merely lists and paraphrases the claim limitations as supposedly constituting the abstract idea.

(Appeal Br. 16).

We disagree with Appellant. The Examiner did provide sufficient evidentiary support for the *Alice* "step two–A" determination in this case. That is, the Examiner found that "the recited steps describe the concept of monitoring financial accounts, which corresponds to concepts identified as abstract ideas by the courts, such as the credit application system in

*Dealertrack Inc.*" (Final Act. 2–3, Answer 3). The Examiner's
characterization of claim 1 is, in our view, fully consistent with the
Specification, including the claim language as set forth above as intrinsic
evidence. That the Examiner articulates the abstract idea at a higher level of
abstraction than would Appellant is an insufficient basis to persuasively
argue that the claim language has been mischaracterized or that the
Examiner has failed to consider the claim as a whole. *See Apple, Inc. v.
Ameranth, Inc.*, 842 F.3d 1229, 1240 (Fed. Cir. 2016) ("An abstract idea can
generally be described at different levels of abstraction.")

Also, we disagree with Appellant that the Examiner failed to establish
the judicial exception (Appeal Br. 16). Instead, the Examiner explicitly
identifies the exception as a "monitoring financial accounts" and compares
the present claims to those found in *Dealertrack Inc. v Huber*, 674 F.3d
1315, 1334 (Fed Cir 2012). (Final Act. 2–3). In *Dealertrack Inc.*, the
claims were found to be directed to "a clearing house concept."
*Dealertrack*, 674 F.3d at 1333. Both "clearinghouse" and "credit application
systems" are similarly tied to fundamental economic principles. Our
reviewing court has found claims to be directed to abstract ideas when they
recite similar subject matter. *Credit Acceptance Corp. v. Westlake Servs.*,
859 F.3d 1044, 1055 (Fed. Cir. 2017) (customer purchase transaction).

We further disagree with Appellant that the present claims are similar
to those in *Trading Technologies Int'l, Inc. v. CQG, Inc.*, 675 F. App'x 1001
(Fed. Cir. 2017). (Appeal Br. 17). In *Trading Technologies*, the district
court found that the claimed devices "have no 'pre-electronic trading
analog,'" and "do not simply claim displaying information on a graphical
user interface." *Trading Techs.*, 675 F. App'x at 1004. The court concluded

"the claimed subject matter is 'directed to a specific improvement to the way computers operate,' . . . for the claimed graphical user interface method imparts a specific functionality to a trading system 'directed to a specific implementation of a solution to a problem in the software arts.'" *Id.* at 1006. We distinguish the claims before us from those in *Trading Technologies*, because, unlike those in *Trading Technologies*, independent claim 1 merely results in "reconfiguring, using the at least one processor, the one or more parameters of the financial account based on the monitored second payment information." Hence, "the claims at issue amount to 'nothing significantly more' than an instruction to apply the abstract idea …using some unspecified, generic computer." *Alice* 573 U.S. at 225–26. Thus, independent claim 1 does not overcome a problem associated with prior art user interfaces or improve the way computers operate, but rather, addresses a business problem related to "providing a starter credit card account for a high risk customer." (Appeal Br. 18).

Likewise unpersuasive are Appellant's analogies of the appealed claims to those in *Amdocs (Israel) Limited v. Openet Telecom Inc.,* 841 F.3d 1288. (Appeal Br. 15, 17, 28, 33). In *Amdocs*, the court adopted the district court's interpretation of the claim term "enhance," stating, it approved "reading the 'in a distributed fashion' and the 'close to the source' of network information requirements into the term 'enhance.'" *Id.* at 1300. The court then went on to find the claim's "enhancing" limitation necessarily required that the generic components operate in an unconventional manner to achieve an improvement in computer functionality. *Id.* at 1300–1301.

In this way, the claims of *Trading Technologies* and *Amdocs* are inconsistent with those before us on appeal here in that in the latter, there are

no specific technologic modifications required to solve a problem or improve the functioning of a known system generally to produce patent-eligible subject matter. *See, e.g.*, *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014); *McRO, Inc. v. Bandai Namco Games America Inc.*, 837 F.3d 1299, 1315 (Fed. Cir. 2016). No such problem or evidence showing how the claims solve a stated technical problem has been identified here, and we are not persuaded that the claims are not directed to an abstract idea.

Although we agree with Appellant that the claims must be read, as a whole (Appeal Br. 24), we nevertheless find, on balance, that claim 1 is directed to method for monitoring electronic financial accounts for the reasons specified above with respect to our "directed to" findings. As found *supra*, claim 1 only includes the following generically recited device limitations: "a processor," and "a computing device." What remains in the claim after disregarding these device limitations, are abstractions, i.e., "determining that the financial account failed to graduate the trial period based at least on the monitored first payment information for the initial stage and the graduation criteria information for the initial statement stage; recalculating graduation criteria information based at least on the monitored first payment information for the initial stage; and evaluating, …, a subsequent statement stage for the financial account by: determining a subsequent statement stage for the financial account based on the account information." "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).

To the extent Appellant is arguing that these are additional elements constituting an inventive concept, such features cannot constitute the "inventive concept." *Berkheimer v. HP, Inc.*, 890 F.3d 1369, 1374 (Fed. Cir. 2018) (Moore, J., concurring) ("It is clear from *Mayo* that the 'inventive concept' cannot be the abstract idea itself, and *Berkheimer* . . . leave[s] untouched the numerous cases from this court which have held claims ineligible because the only alleged 'inventive concept' is the abstract idea."); *see also BSG Tech. LLC v. BuySeasons, Inc.*, 899 F.3d 1281, 1290 (Fed. Cir. 2018) ("It has been clear since *Alice* that a claimed invention's use of the ineligible concept to which it is directed cannot supply the inventive concept that renders the invention 'significantly more' than that ineligible concept.").

Similarly unpersuadable is Appellant's argument, "As in *McRO,* these functions improve computer-related technology by 'allowing computer performance of a function not previously performable by a computer.' [footnote 81 states "*McRO and BASCOM Memo*, p. 2."] In this manner, the claims recite a 'technological improvement over the existing, manual ... techniques.'" (Appeal Br. 36, *see also* generally 33, 34). The question is whether the claims as a whole "focus on a specific means or method that improves the relevant technology" or are "directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery." *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314 (Fed. Cir. 2016). In this case, claim 1, as found above taken as a whole, is focused on satisfying certain contingencies for "providing starter credit card accounts to high risk customers."

Appellant next argues, "[a]t the outset, the Examiner commits clear legal error, in that the Examiner fails to identify what elements are necessary

to the abstract idea, which would identify the elements that would be
'additional' to the abstract idea, and simply discards any limitation in the
claims that is not directed to physical structure." (Appeal Br. 40).

We disagree with Appellant because the Examiner properly performed
the "two-part <u>Mayo</u> analysis." The Examiner identified the required
determinations for the "two–part Mayo analysis" in the record as set forth
above. *See* Final Act. 2–4. To the extent Appellant is arguing that the
Examiner did not follow the outline set forth in the 2019 Revised Patent
Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019),
Appellants' argument is not persuasive as to error because the law applied
by the Examiner's Answer is the same substantive law followed by that
Guidance.

> This guidance does not constitute substantive rulemaking
> and does not have the force and effect of law. The guidance
> sets out agency policy with respect to the USPTO's
> interpretation of the subject matter eligibility requirements of
> 35 U.S.C. 101 in view of decisions by the Supreme Court and
> the Federal Circuit. The guidance was developed as a tool for
> internal USPTO management and does not create any right or
> benefit, substantive or procedural, enforceable by any party
> against the USPTO. Rejections will continue to be based upon
> the substantive law, and it is those rejections that are appealable
> to the Patent Trial and Appeal Board (PTAB) and the courts.
> All USPTO personnel are, as a matter of internal agency
> management, expected to follow the guidance. Failure of
> USPTO personnel to follow the guidance, however, is not, in
> itself, a proper basis for either an appeal or a petition.

Guidance, 84 Fed. Reg. at 51.

Appellant also offers no evidence or technical reasoning (Appeal
Br. 38, 40, 41) to demonstrate that the store, associate, determine, evaluate,

access, recalculate, monitor steps recited in claim 1 are not well-understood, routine, and conventional computer activities, i.e., generic computer functions. *Cf. In re Katz Interactive Call Processing Patent Litig.*, 639 F.3d at 1316 ("Katz has not claimed a specific function performed by a special purpose computer, but has simply recited the claimed functions of 'processing,' 'receiving,' and 'storing.' Absent a possible narrower construction of the terms 'processing,' 'receiving,' and 'storing,' discussed below, those functions can be achieved by any general purpose computer without special programming."). Nor does Appellant identify any detail or property that would transform the otherwise generic computer components into a specialized or special purpose machine.

Finally, we disagree that "Appellant's claims are similar to those of *BASCOM* [2] in that, like those of *BASCOM*, they do not define a mere abstract concept, or a concept similar to those found by the courts to be abstract." (Appeal Br. 45, *see also generally id.* at 42–46). 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. In contrast, Appellant does not identify the

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[2] *Bascom Global Internet v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016).

allegedly "non-conventional and non-generic" arrangement of elements that provides the inventive concept. The Appellant argues "electronically code-based methodology" (Appeal Br. 46) as a factor in favor of advancing its technology based solution, but this feature is not recited in the claims. Instead, Appellant appears to be relying on attorney argument alone. As we found above, in this particular case, the broadly claimed sequence of information analysis and output, 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*, 772 F.3d at 715 (sequence of receiving, selecting, offering for exchange, display, allowing access, and receiving payment recited an abstraction)). In summary, 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 1 that yield an improvement in the functioning of a computer, or an improvement to another technology or technical field.

## CONCLUSION

| Claims Rejected | 35 U.S.C. § | Affirmed | Reversed |
|---|---|---|---|
| 1, 6, 7, 14–22, 27–36 | 35 U.S.C. § 101 | 1, 6, 7, 14–22, 27–36 | |
| **Overall Outcome** | | 1, 6, 7, 14–22, 27–36 | |

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).

<u>AFFIRMED</u>