



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.
14/080,994	11/15/2013	Jonathan Peter Treble	60421-0028	1059
29989	7590	09/25/2019	EXAMINER	
HICKMAN PALERMO BECKER BINGHAM LLP			RACIC, MILENA	
1 ALMADEN BOULEVARD			ART UNIT	
FLOOR 12			PAPER NUMBER	
SAN JOSE, CA 95113			3627	
			NOTIFICATION DATE	DELIVERY MODE
			09/25/2019	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):

usdoCKET@h35g.com

2092 UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JONATHAN PETER TREBLE,
LEE FREDERICK BAKER, and MATTHEW MALONEY

Appeal 2018-003631
Application 14/080,994
Technology Center 3600

Before JOHN A. JEFFERY, JENNIFER L. McKEOWN, and
LINZY T. McCARTNEY, *Administrative Patent Judges*.

McCARTNEY, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants seek review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1–15. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

BACKGROUND

This patent application “relates to a system and method for determining the time of delivery of a food order and the service time of the food order.” Specification ¶ 2, filed November 15, 2013 (“Spec.”). Claims 1 and 9 are independent. Claim 1 illustrates the claimed invention:

1. A method for determining a time of delivery of an order, the method operating within a service system and comprising:

i) receiving, by the service system, an order from a first customer device over a wide area network wherein the order specifies a customer telephone number of a first customer;

ii) selecting, by the service system, a routing telephone number from a plurality of routing telephone numbers maintained by the service system by using a pointer to point to a next available routing telephone number entry;

iii) forming, by the service system, an association between the routing telephone number and the order based on the next available routing telephone number entry that the pointer points to;

iv) sending, over a network by the service system, the order and the routing telephone number to an on-site service appliance at a restaurant;

v) receiving, over a network by the service system, a first order delivery message from a delivery mobile device that is remote from the service system, wherein the first order delivery message indicates a first source telephone number, a first destination telephone number, a first message reception time, and a first message type, wherein the first source telephone number corresponds to the delivery mobile device and the first destination telephone number is the routing telephone number;

vi) in response to receiving the first order delivery message, mapping, by the service system, the routing telephone number to the customer telephone number based on the association between the routing telephone number and the order;

vii) sending, by the service computer, a second order delivery message to a second customer device, wherein the second order delivery message indicates a second source telephone number, a second destination telephone number, a second message reception time, and a second message type, wherein the second destination telephone number is the customer telephone number; and

viii) setting the second message reception time as the time of delivery of the order using the service system.

Appeal Brief 21–22, filed August 11, 2017 (“App. Br.”).

REJECTION

Claims	Basis
1–15	§ 101

DISCUSSION

We have reviewed the Examiner’s rejection and Appellants’ arguments, and we disagree with Appellants that the Examiner erred. As consistent with the discussion below, we adopt the Examiner’s reasoning, findings, and conclusions on pages 2–12 of the Final Office Action mailed June 16, 2017 (“Final Act.”) and on pages 3–14 of the Examiner’s Answer mailed December 20, 2017 (“Ans.”).

Section 101 Rejection

Section 101 of the Patent Act provides that “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof” is patent eligible. 35 U.S.C. § 101. But the Supreme Court has long recognized an implicit exception to this section: “Laws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014) (quoting *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)).

To determine whether a claim falls within one of these excluded categories, the Court has set out a two-part framework. The framework requires us first to consider whether the claim is “directed to one of those patent-ineligible concepts.” *Alice*, 573 U.S. at 217. If so, we then examine “the elements of [the] claim both individually and ‘as an ordered combination’ to determine whether the additional elements ‘transform the nature of the claim’ into a patent-eligible application.” *Alice*, 573 U.S. at 217 (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 78, 79 (2012)). That is, we examine the claim for an “inventive concept,” “an element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.’” *Alice*, 573 U.S. at 217–18 (alteration in original) (quoting *Mayo*, 566 U.S. at 72–73).

The Patent Office has revised its guidance about this framework. *See* 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Revised Guidance”). Under the Revised Guidance, to decide whether a claim is directed to an abstract idea, we evaluate whether the claim (1) recites subject matter that falls within one of the abstract idea groupings listed in the Revised Guidance and (2) fails to integrate the recited abstract idea into a practical application. *See* Revised Guidance, 84 Fed. Reg. at 51, 54. If the claim is directed to an abstract idea, as noted above, we then determine whether the claim has an inventive concept. The Revised Guidance explains that when making this determination, we should consider whether the additional claim elements add “a specific limitation or combination of limitations that are not well-understood, routine, conventional activity in the field” or “simply append[] well-understood,

routine, conventional activities previously known to the industry, specified at a high level of generality.” Revised Guidance, 84 Fed. Reg. at 56.

With these principles in mind, we turn to the merits of the § 101 rejection. Appellants argue claims 1–15 together for this rejection, so as permitted by 37 C.F.R. § 41.37(c)(1)(iv), we decide the appeal for this rejection based on claim 1.

Abstract Idea

The Revised Guidance explains that the abstract idea exception includes “certain methods of organizing human activity” such as fundamental economic principles or practices, commercial or legal interactions, and managing personal behavior or relationships or interactions between people. Revised Guidance, 84 Fed. Reg. at 52. The Examiner determined that claim 1 recites subject matter that falls within this abstract idea grouping. *See* Final Act. 2–3 (determining that claim 1 is “directed to or describe[s] ‘certain methods of organizing human activity’”), 4 (explaining that “[i]n addition to ‘[c]ertain methods of organizing human activity’ . . . claim 1 further describes a fundamental economic practice”), 7 (explaining that the claimed invention “addresses problems specifically arising in the realm of business or commerce”).

We agree. The written description can be helpful in determining whether a claim recites an abstract idea. *See ChargePoint, Inc. v. SemaConnect, Inc.*, 920 F.3d 759, 767 (Fed. Cir. 2019) (explaining that the written description is “useful in illuminating whether the claims are ‘directed to’ the identified abstract idea”). For example, determining whether a claim recites an abstract idea can “involve looking to the [written description] to understand the ‘problem facing the inventor’ and, ultimately, what the

[application] describes as the invention.” *ChargePoint*, 920 F.3d at 767. Here, the written description indicates that the problem facing the inventor was accurately determining order delivery times. The written description explains that although “deliverymen . . . often call . . . diners to notify them that their orders are at their door step or ground level of their buildings,” “deliverymen rarely notify a conventional restaurant service system when they arrive” to deliver an order. Spec. ¶ 50. As a result, “the conventional restaurant service system fails to obtain information as to when an order is actually delivered to the customers.” Spec. ¶ 50.

This is an issue because “[t]he quality of the delivery service often hinges on an accurate estimation or determination of the time of delivery of an order” and “[b]etter quality of the delivery service boosts sales of the underlying goods.” Spec. ¶ 3. To address this issue, the disclosed invention uses “telephone routing such that the delivery driver calls a telephone number of the restaurant service, rather than that of the diner, when the delivery driver arrives at the diner’s delivery address.” Spec. ¶ 51 (reference numbers omitted). The invention forwards the delivery driver’s call to the diner and sets the time of the call to the delivery time of the order. *See* Spec. ¶ 63.

The written description does not suggest that the disclosed invention uses a new type of telephone routing or overcomes some difficulty with telephone routing. And as discussed further below, the written description does not suggest that the other components used by the invention such as pointers are new or improved. In fact, Appellants acknowledge that both routing numbers and pointers are conventional. Reply Brief 10, filed February 20, 2018 (“Reply Br.”) (arguing that although “elements such as

routing numbers and orders are conventional,” claim 1 is still patent eligible). Rather, the written description instead generally focuses on the commercial practice of determining delivery order times. *See, e.g.*, Spec. ¶ 20 (“[T]he present disclosure provides a method and system for determining the time of delivery of an order.”). The way the written description describes the problem facing the inventors and the invention suggests that claim 1 recites an abstract idea. *See ChargePoint*, 920 F.3d at 768 (determining that the problem identified in the written description and the way the written description described the invention “strongly suggests” that the identified abstract idea in the claim may be the focus of the claim).

Turning to the language of claim 1, the claim recites “[a] method for determining a time of delivery of an order” that includes steps i–viii reproduced above. In short, the claimed method (1) associates a received order with a routing telephone number selected using a pointer and (2) sends the order to a device at a restaurant. *See App. Br.* 21. In response to receiving an order delivery message, the method (3) maps the routing telephone number to the customer telephone number of the order, (4) sends a second order delivery message to a customer device, and (5) sets the message reception time of the second order delivery message as the order delivery time. *See App. Br.* 21–22.

Determining the delivery time of an order in this manner is a commercial practice not meaningfully different from other commercial practices that courts have determined are abstract ideas. *See, e.g., Wireless Media Innovations, LLC v. Maher Terminals, LLC*, 100 F. Supp. 3d 405, 412–415 (D.N.J. 2015), *aff’d*, 636 F. App’x 1014 (Fed. Cir. 2016) (tracking shipping containers); *GT Nexus, Inc. v. Intra, Inc.*, No. C 11-02145-SBA,

2015 WL 6747142, at *4–6 (N.D. Cal. Nov. 5, 2015), *aff'd*, 669 F. App'x 562 (Fed. Cir. 2016) (booking and tracing shipping containers through a third party); *Mobile Telecomm. Techs., LLC v. United Parcel Serv., Inc.*, 173 F. Supp. 3d 1324, 1330–32 (N.D. Ga. 2016), *aff'd*, 708 F. App'x 684 (Fed. Cir. 2018) (providing delivery notification for express packages); *Baggage Airline Guest Servs., Inc. v. Roadie, Inc.*, 351 F. Supp. 3d 753, 758–60 (D. Del. 2019) (coordinating and monitoring baggage delivery). Claim 1 thus recites certain methods of organizing human activity, one of the abstract idea groupings listed in the Revised Guidance. Revised Guidance, 84 Fed. Reg. at 52. Claim 1 therefore recites an abstract idea.

Appellants' arguments have not persuaded us otherwise. Appellants point out that the Examiner stated that claim 1 concerns “receiving and processing an order” and argue that this is a characterization of the abstract idea “at such a high level of abstraction that the abstract idea is completely separated from the actual elements of the claim.” App. Br. 5, 6. Appellants also contend that this characterization is “unrelated to the specific improvement claimed in the claims” and thus “is far too abstract.” App. Br. 6, 7.

We disagree. First, the Examiner explicitly determined that claim 1 recites certain methods of organizing human activity, not simply receiving and processing an order. *See* Final Act. 2–3 (determining that claim 1 is “directed to or describe[s] ‘certain methods of organizing human activity’”), 4 (determining that “[i]n addition to ‘[c]ertain methods of organizing human activity’ . . . claim 1 further describes a fundamental economic practice”). In connection with this determination, the Examiner explained that claim 1 describes a number of related concepts such as “managing relationships or

transactions between people,” “seek[ing] to engage a human user in sales activities,” “receiving and selectively forwarding data/information,” and “receiving and processing an order,” *see* Final Act. 3, but that does not change that the Examiner ultimately determined that claim 1 recites certain methods of organizing human activity. Indeed, as discussed below, Appellants acknowledge the Examiner determined that claim 1 recites certain methods of organizing human activity by asserting that “nothing about” the claimed invention “can be construed as ‘organizing human activities’ as alleged by the” Examiner. App. Br. 10; *see also* Reply Br. 1 (“The Examiner specifically alleges that representative [c]laim 1 directs itself to ‘certain methods of organizing human activity’ . . .”).

Second, even if the Examiner had characterized the abstract idea as simply receiving and processing an order, Appellants have not persuaded us that this characterization alone would amount to reversible error. As the Federal Circuit has explained, “[a]n abstract idea can generally be described at different levels of abstraction” and choosing one level of abstraction over another does not necessarily “impact the patentability analysis.” *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1240, 1241 (Fed. Cir. 2016). That is true here. Regardless of the level of generality used to characterize the abstract idea, the result would be the same—claim 1 recites an abstract idea.

Appellants next contend that “‘receiving and processing an order’ does not qualify as the relevant abstract idea[] because . . . any similarities” between the abstract idea and the cases cited by the Examiner “are ancillary and/or superficial.” App. Br. 8. As noted above, Appellants also assert in passing that “nothing about” the claimed invention “can be construed as ‘organizing human activities,’ as alleged by the” Examiner and thus cases

such as *Bilski*¹ and *Alice* cited by the Examiner “are inapplicable.” App. Br. 10.

We again disagree. As explained above, contrary to Appellants’ arguments, the Examiner determined that claim 1 recites certain methods of organizing human activity, not simply receiving and processing an order. As a result, Appellants’ argument that “‘receiving and processing an order’ does not qualify as the relevant abstract idea” does not adequately address the Examiner’s rejection and is thus unpersuasive. As for Appellants’ assertion that “nothing about” the claimed invention “can be construed as ‘organizing human activities,’” Appellants do not provide persuasive evidence or reasoning to support this assertion in the Appeal Brief. *See* App. Br. 10.

Next, despite the Examiner determining in the Final Office Action that claim 1 “describes a fundamental economic practice” and “addresses problems specifically arising in the realm of business or commerce,” Final 4, 7, Appellants argue for the first time in the Reply Brief that the claimed improvement “does not focus on the economy or commerce” but instead “focuses on the use of computer-based pointers and routing numbers to address the technological problem of saving limited computer processing resources,” Reply Br. 3.

Appellants waived this argument by failing to explicitly raise it in the Appeal Brief. *See* 37 C.F.R. §§ 41.37(c)(1)(iv), 41.41(b)(2). Even if Appellants had timely raised this argument, we would have found it unpersuasive. The written description does not describe using pointers and routers to address the technological problem asserted by Appellants. Instead,

¹ *Bilski v. Kappos*, 561 U.S. 593 (2010).

the written description focuses on the commercial practice of accurately determining order delivery time. *See, e.g.*, Spec. ¶¶ 3 (explaining that “[b]etter quality of the delivery service boosts sales of the underlying goods” and “[t]he quality of the delivery service often hinges on an accurate estimation or determination of the time of delivery of an order”), 5 (disclosing “there is a need for a system and method that accurately determine the time of delivery and service time of an order”) 6–15 (disclosing that the objectives of the invention include determining order delivery and services times). As noted above, we see no meaningful difference between this commercial practice and other commercial practices that courts have determined are abstract ideas.

Because we determine that claim 1 recites an abstract idea, we next consider whether claim 1 integrates the abstract idea into a practical application. *See Revised Guidance*, 84 Fed. Reg. at 51. In doing so, we consider whether there are any additional elements beyond the abstract idea that, individually or in combination, “integrate the [abstract idea] into a practical application, using one or more of the considerations laid out by the Supreme Court and the Federal Circuit.” *Revised Guidance*, 84 Fed. Reg. at 54–55.

The Examiner determined that claim 1 recites additional elements such as “a service system,” “a first customer device,” “a second customer device,” “an on-site service appliance,” “a wide area network,” “a network,” “a delivery mobile device,” and “a pointer.” *See Final Act*. 4. The Examiner determined that the additional elements “are merely recited in a generic manner” and “claim 1 merely leverages broadly and generically recited computing components.” *Final Act*. 5.

We agree. The written description makes clear that the additional elements recited in claim 1 are conventional and perform conventional functions. For example, the written description discloses that service system 100 includes diner server 32, restaurant server 34, driver server 108, and communication server 130. *See* Spec. ¶¶ 39–43 (disclosing that the servers are within service system 100). The written description describes these servers in a high-level, functional manner. *See, e.g.*, Spec. ¶ 44 (disclosing that the servers “each include a processor, a network interface, and some amount of memory” and “server software application to implement the functions and features of the restaurant services”). Similarly, the written description discloses that customer devices can be “laptop computers, desktop computers, tablet computers or smartphones as pictured in Figure 11” that a diner uses to “access[] the restaurant service system.” Spec. ¶ 39.

The same is true of the other recited additional elements. *See, e.g.*, Spec. ¶¶ 38 (disclosing that on-site service appliance 36 is “a mobile device including a touchscreen, a processor, a display, a wireless network interface, some amount of memory, and a storage device” that can “post orders directly to . . . as well as monitor menu changes made in the [point-of-sale system]”), 39 (disclosing that customer devices can communicate with service system 100 over the Internet or a public telephone network), 40 (disclosing that a restaurant server is “coupled to the Internet 14 or another wide area network”), 41 (disclosing that a delivery mobile device can be “smartphone or a tablet computer” or “a conventional cellphone with a keypad” that “allows the driver to place a phone call” (reference number omitted)), 53 (disclosing that “a pointer 408 is used to indicate the position in the list 400 from where searching the next available routing telephone

number begins”), 54 (disclosing that a routing entry is pointed to by pointer 408 and that, in certain circumstances, pointer 408 moves to the next entry in a list).

These descriptions indicate that these elements are conventional and perform conventional functions. *See Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1384 (Fed. Cir. 1986) (“[A] patent need not teach, and preferably omits, what is well known in the art.”); *Intellectual Ventures I LLC v. Erie Indem. Co.*, 850 F.3d 1315, 1331 (Fed. Cir. 2017) (“The claimed mobile interface is so lacking in implementation details that it amounts to merely a generic component (software, hardware, or firmware) that permits the performance of the abstract idea, i.e., to retrieve the user-specific resources.”). Indeed, Appellants appear to acknowledge that conventionality of some of these elements. For example, Appellants note that pointers have a “specific technical meaning understood by one of ordinary skill in the art as a programming object whose value refers to another value stored in computer memory.” Reply Br. 4.

Appellants contend that any limitation that is “either not directed to ‘receiving and processing an order’” or has “elements that are far more specific than ‘receiving and processing an order’ . . . are, by definition, ‘additional elements.’” App. Br. 12. Based on this definition of “additional elements,” Appellants argue that the Examiner “fail[ed] to identify and address” numerous additional elements. App. Br. 11–12; *see also* App. Br. 18–19 (listing additional elements). Appellants assert that these elements “are not ‘merely recited in a generic manner,’” “tie the claims to a specific practical application,” and “are exactly the types of limitations that the

courts have held satisfy the requirements of § 101.” App. Br. 19 (emphasis omitted).

We disagree. Appellants’ arguments assume that the Examiner determined that the relevant abstract idea is receiving and processing an order. But the Examiner did not do so. As discussed above, the Examiner determined that claim 1 recites certain methods of organizing human activity, and based on this abstract idea, the Examiner identified the additional elements listed above. *See, e.g.*, Final Act. 2–5. Nearly all of the additional elements listed by Appellants form part of the abstract idea identified by the Examiner. *See* App. Br. 11–12, 18–19. These elements thus cannot integrate the abstract idea into a practical application. *See Trading Techs. Int’l, Inc. v. IBG LLC*, 921 F.3d 1084, 1093 (Fed. Cir. 2019) (“The abstract idea itself cannot supply the inventive concept, ‘no matter how groundbreaking the advance.’” (quoting *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1170 (Fed. Cir. 2018))).

Appellants next argue that claim 1 is “directed to a specific improvement to a computer operation” and “improves upon existing logical structures and processes.” App. Br. 7; Reply Br. 6. Appellants assert that the claimed method “significantly decreases the processing resources, memory, and storage space that is traditionally used to store, encrypt, and decrypt customer phone numbers” and thus claim 1 is “‘directed to’ improving the use of computer processing resources, memory, and storage space, rather than to a mere abstract idea.” App. Br. 7; *see also* Reply Br. 6–8.

Appellants have presented no persuasive evidence to support these arguments. *See* App. Br. 7; Reply Br. 6–8. Simply asserting that the claimed method has certain advantages over prior art methods does not make it so.

And as noted above, the written description makes clear that the focus of the claimed invention is determining the delivery time of an order, not improving how computers function or improving logical structures and processes. The written description repeatedly indicates that the purpose of the invention is determining delivery and service times of an order. *See, e.g.*, Spec. ¶¶ 2 (“[T]he present disclosure relates to a system and method for determining the time of delivery of a food order and the service time of the food order.”), 6–15 (disclosing that objectives of the invention concern determining a delivery or service time of an order), 20 (“[T]he present disclosure provides a method and system for determining the time of delivery of an order.”), Abstract (“A method and system for determining the time of delivery of an order is performed by a service system.”). Indeed, the title of the application is “SYSTEM AND METHOD FOR DETERMINING TIME OF DELIVERY OF ORDER.” Spec. 1.

At bottom, claim 1 uses conventional computer components that perform conventional functions as tools to perform an abstract idea. Using conventional computer components in this way is not enough to integrate the recited abstract idea into a practical application. *See Alice*, 573 U.S. at 223–24 (“[W]holly generic computer implementation is not generally the sort of ‘additional featur[e]’ that provides any ‘practical assurance that the process is more than a drafting effort designed to monopolize the [abstract idea] itself.’” (quoting *Mayo*, 566 U.S. at 77)).

Inventive Concept

Finally, we consider whether claim 1 has an inventive concept, that is, whether the claim has additional elements that “‘transform the nature of the claim’ into a patent-eligible application.” *Alice*, 573 U.S. at 217 (quoting

Mayo, 566 U.S. at 78, 79). As discussed above, this requires us to evaluate whether the additional claim elements add “a specific limitation or combination of limitations that are not well-understood, routine, conventional activity in the field” or “simply append[] well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality.” Revised Guidance, 84 Fed. Reg. at 56.

The Examiner determined that the additional elements recited in claim 1 perform “well-understood, routine and conventional functions such as receiving, selecting, sending, mapping, and storing data.” Final Act. 5 (citation omitted).

We agree. As discussed above, the written description describes the additional elements in a manner that indicates that the elements encompass conventional computer components that perform conventional functions. Moreover, courts have recognized that the recited functions are well-understood, routine, and conventional computer functions. For example, many of the limitations recited in claim 1 require sending and receiving data. *See* App. Br. 21–22. The Federal Circuit has explained “[t]hat a computer receives and sends . . . information over a network—with no further specification—is not even arguably inventive.” *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014).

Claim 1 also recites selecting a routing telephone number using a pointer and forming an association between a routing telephone number and an order. *See* App. Br. 21. The Federal Circuit has determined on at least one occasion that selecting information using a pointer is a well-understood, routine, and conventional computer function. *See Intellectual Ventures I*, 850 F.3d at 1331 (determining that a claim that recites using a mobile

interface and pointers to retrieve information “simply recites that the abstract idea will be implemented using the conventional components and functions generic to electronic mobile devices”). Forming an association between a routing telephone number and an order encompasses simply writing data to memory. *See, e.g.*, Spec. ¶ 54 (disclosing that “the restaurant server software application associates the order with the available routing telephone number entry . . . by setting the assignment timestamp 404 to the current time” and “sets the order ID of the order to the order ID field 406 of the routing telephone number entry”). Courts have determined that storing data is a well-understood, routine, and conventional computer function. *See, e.g., Alice*, 573 U.S. at 226 (“Nearly every computer will include a ‘communications controller’ and ‘data storage unit’ capable of performing the basic calculation, storage, and transmission functions required by the method claims.”); *Versata Dev. Grp., Inc. v. SAP Am., Inc.*, 793 F.3d 1306, 1335 (Fed. Cir. 2015) (“The steps in Versata’s claims (e.g., arranging, storing, retrieving, sorting, eliminating, determining) are conventional, routine, and well-known. They involve the normal, basic functions of a computer.”). Claim 1 also recites setting the second message reception time as the order delivery time. *See App. Br. 22*. This step encompasses storing data in memory as well, which as noted above is a conventional computer function. *See Spec ¶ 63* (“At 616, the communication server software application sets the delivery time of the order to the time of the telephone call. . . . At 616, the time of delivery is further stored in the database 104 as indicated at 1054”); *see also Alice*, 573 U.S. at 226; *Versata*, 793 F.3d at 1335.

Appellants contend that, like the patent-eligible claims in *BASCOM*,² the claimed invention uses an unconventional arrangement of “conventional elements . . . to achieve the technical benefit of decreasing use of processing resources, memory, and storage.” App. Br. 15. According to Appellants, the claimed method achieves these benefits “by using pointers to select a routing phone number to associate with an order” so that the method “provides the technical benefit of avoiding processing resources and memory needed for encrypting and decrypting numerous customer phone numbers.” App. Br. 14, 15. Appellants also assert that because a “finite number of routing phone numbers maintained in the list may be used and reused, [c]laim 1 provides the technical benefit of reducing data storage that would otherwise be used to store countless encrypted customer phone numbers.” App. Br. 15.

We disagree. In *BASCOM*, the claimed invention “represent[ed] a ‘software-based invention[] that improve[d] the performance of the computer system itself.’” *BASCOM*, 827 F.3d at 1351. Here, although Appellants contend the claimed invention improves computer performance by “decreasing use of processing resources, memory, and storage” relative to encrypting and decrypting phone numbers, App. Br. 14, Appellants have presented no persuasive evidence to support this contention. Appellants have pointed to nothing in the written description that suggests that the invention aims to reduce processing time and memory usage compared to encrypting and decrypting data, let alone that the invention actually does so. Nor have Appellants cited any other evidence that the claimed invention accomplishes

² *BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016).

this alleged goal. We find this unsupported attorney argument unpersuasive. *Cf. In re Pearson*, 494 F.2d 1399, 1405 (CCPA 1974) (determining that an appellant’s argument failed because the appellant offered “no competent evidence” to negate the Board’s conclusion). And although Appellants contend that some of these benefits stem from employing a “finite number of routing phone numbers” that “may be used and reused,” claim 1 does not explicitly require that the recited method reuse routing numbers. *See App. Br. 21–22*. For this additional reason, we find Appellants’ argument unpersuasive. *See Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1149 (Fed. Cir. 2016) (“The § 101 inquiry must focus on the language of the Asserted Claims themselves.”).

We find Appellants’ argument that claim 1 is analogous to the patent-eligible claims in *Amdocs*³ unpersuasive for similar reasons. According to Appellants, like the claims in *Amdocs*, claim 1 “provide[s] technological enhancements using a distributed architecture.” *App. Br. 15*; *see also Reply Br. 8*. Appellants assert that the “technological improvement of decreasing the use of processing resources and memory is achieved” by the claimed method “using a distributed architecture.” *App. Br. 16*. But as discussed above, Appellants have provided no persuasive evidence to support the contention that the claimed invention decreases the use of processing resources and memory relative to the prior art. We thus find this argument unpersuasive.

Appellants also argue that the Examiner’s withdrawal of an obviousness rejection shows that “[c]laim 1 recites unconventional steps.”

³ *Amdocs (Isr.) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288 (Fed. Cir. 2016).

App. Br. 16. But the Examiner’s withdrawal of an obviousness rejection based on particular prior art, without more, does not establish that claim 1 involves unconventional activity. *See Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1315 (Fed. Cir. 2016) (“While the claims may not have been anticipated or obvious because the prior art did not disclose ‘determining . . . whether each received content identifier matches a characteristic’ or ‘outputting . . . an indication of the characteristic of the data file,’ that does not suggest that the idea of ‘determining’ and ‘outputting’ is not abstract, much less that its implementation is not routine and conventional.”). Regardless, based on the Examiner’s patent-eligibility rejection, the better reading of the Examiner’s withdrawal of the obviousness rejection is that the Examiner determined that the prior art did not teach or suggest aspects of the recited *abstract idea*. And an abstract idea cannot provide an inventive concept. *See Trading Techs. Int’l*, 921 F.3d at 1093.

In sum, the recited additional elements, taken individually or as an ordered combination, do nothing more than “append[] well-understood, routine, conventional activities previously known to the industry.” Revised Guidance, 84 Fed. Reg. at 56.

Conclusion

Because claim 1 is directed to an abstract idea and does not have an inventive concept, we sustain the Examiner’s rejection of claim 1 under § 101.

DECISION

Claims Rejected	Basis	Affirmed	Reversed
1-15	§ 101	1-15	
Outcome		1-15	

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

AFFIRMED