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Table with 5 columns: APPLICATION NO., FILING DATE, FIRST NAMED INVENTOR, ATTORNEY DOCKET NO., CONFIRMATION NO.
14/601,272 01/21/2015 Ben Weinstein 13690 1082

27752 7590 05/15/2019
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Table with 1 column: EXAMINER

KYEREME-TUAH, AKOSUA P

Table with 2 columns: ART UNIT, PAPER NUMBER

3623

Table with 2 columns: NOTIFICATION DATE, DELIVERY MODE

05/15/2019

ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* BEN WEINSTEIN, CHRISTOPHER GEROLD STOLTZ,  
JOSE M. ORTEGA, BROOKS MONTGOMERY STEIN,  
EDWARD DEWEY SMITH, III, and HENRIQUE AVEIRO<sup>1</sup>

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Appeal 2018-003975  
Application 14/601,272  
Technology Center 3600

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Before ROBERT E. NAPPI, JOHNNY A. KUMAR, and LINZY T.  
McCARTNEY, *Administrative Patent Judges*.

NAPPI, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claim 1. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> According to Appellants, The Procter & Gamble Company is the real party in interest. App. Br. 1.

## INVENTION

The invention is directed to a method for defining transportation logistic needs for a product which involves determining the product's environmental sensitivity, its transportation path and based upon a simulation of the weather along the path determining the adverse effects of environmental exposure during transportation. Spec. 1, 1. 19 – 2, 1. 6. Claim 1 is illustrative of the invention and is reproduced below.

1. A computer implemented method for defining transport logistic needs for a product, the method comprising:
  - a) providing the product's environmental sensitivity profile;
  - b) providing the product's shipment configuration profile;
  - c) defining a product shipment path;
  - d) creating a weather model associated with the product shipment path;
  - e) simulating the weather along the path during the selected timing;
  - f) calculating an environmental exposure of the product according to the shipment configuration profile and the simulated weather;
  - g) determining adverse product effects according to the environmental exposure and the environmental sensitivity profile; and
  - h) altering at least one of the: product, product shipment configuration, and product shipment path according to the determined adverse product effects.

## EXAMINER'S REJECTIONS<sup>2</sup>

The Examiner rejected claim 1 under 35 U.S.C. § 101 for being directed to patent-ineligible subject matter. Final Act. 8–11.

The Examiner rejected claim 1 under 35 U.S.C. § 102(a)(1) as being anticipated by Hoyt (US 6,397,163 B1; iss. May 28, 2002). Final Act. 11–14.

## ANALYSIS

We have reviewed Appellants' arguments in the Briefs, the Examiner's rejections, and the Examiner's response to Appellants' arguments. Appellants' arguments have not persuaded us of error in the Examiner's rejections of claim 1 under 35 U.S.C. § 101 or 35 U.S.C. § 102(a)(1).

### Rejection under 35 U.S.C. § 101

#### PRINCIPLES OF LAW

Patent-eligible subject matter is defined in 35 U.S.C. § 101 of the Patent Act, which recites:

Whoever 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.

There are, however, three judicially created exceptions to the broad categories of patent-eligible subject matter in 35 U.S.C. § 101: “[I]aws of

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<sup>2</sup> Throughout this Decision we refer to the Appeal Brief filed October 11, 2017 (“App. Br.”); Final Office Action mailed May 12, 2017 (“Final Act.”); and the Examiner’s Answer mailed November 28, 2017 (“Answer”).

nature, natural phenomena, and abstract ideas.” *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014) (internal quotation marks and citation omitted); *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 70 (2012).

In determining whether a claim falls within an excluded category, we are guided by the Supreme Court’s two-step framework, described in *Mayo* and *Alice*. *Alice*, 573 U.S. at 217–18 (citing *Mayo*, 566 U.S. at 75–77). In accordance with that framework, we first determine what concept the claim is “directed to.” See *Alice*, 573 U.S. at 219 (“On their face, the claims before us are drawn to the concept of intermediated settlement, *i.e.*, the use of a third party to mitigate settlement risk.”); see also *Bilski v. Kappos*, 561 U.S. 593, 611 (2010) (“Claims 1 and 4 in petitioners’ application explain the basic concept of hedging, or protecting against risk.”).

Concepts determined to be abstract ideas, and, thus, patent ineligible, include certain methods of organizing human activity, such as fundamental economic practices (*Alice*, 573 U.S. at 219–20; *Bilski*, 561 U.S. at 611); mathematical formulas (*Parker v. Flook*, 437 U.S. 584, 594–95 (1978)); and mental processes (*Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)). Concepts determined to be patent eligible include physical and chemical processes, such as “molding rubber products” (*Diamond v. Diehr*, 450 U.S. 175, 191 (1981)); “tanning, dyeing, making water-proof cloth, vulcanizing India rubber, smelting ores” (*id.* at 182 n.7 (quoting *Corning v. Burden*, 56 U.S. 252, 267–68 (1853))); and manufacturing flour (*Benson*, 409 U.S. at 69 (citing *Cochrane v. Deener*, 94 U.S. 780, 785 (1876))).

In *Diehr*, the claim at issue recited a mathematical formula, but the Supreme Court held that “[a] claim drawn to subject matter otherwise

statutory does not become nonstatutory simply because it uses a mathematical formula.” *Diehr*, 450 U.S. at 187; *see also id.* at 191 (“We view respondents’ claims as nothing more than a process for molding rubber products and not as an attempt to patent a mathematical formula.”). Having said that, the Supreme Court also indicated that a claim “seeking patent protection for that formula in the abstract . . . is not accorded the protection of our patent laws, . . . and this principle cannot be circumvented by attempting to limit the use of the formula to a particular technological environment.” *Id.* (citing *Benson* and *Flook*); *see, e.g., id.* at 187 (“It is now commonplace that an *application* of a law of nature or mathematical formula to a known structure or process may well be deserving of patent protection.”).

If the claim is “directed to” an abstract idea, we turn to the second step of the *Alice* and *Mayo* framework, where “we must examine the elements of the claim to determine whether it contains an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Alice*, 573 U.S. at 221 (internal citation 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.* (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 United States Patent and Trademark Office “USPTO” recently published revised guidance on the application of § 101. USPTO’s January 7, 2019 Memorandum, *2019 Revised Patent Subject Matter Eligibility*

*Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Memorandum”). Under that guidance, we first determine 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) (9th Ed., Rev. 08.2017, Jan. 2018)).

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* Memorandum.

## ANALYSIS

### Abstract Idea

The Examiner determines the claim is not patent eligible as it is directed to a judicial exception without reciting significantly more. Final Act. 9–10. Specifically, the Examiner determines the claim recites an abstract idea, a mental process of obtaining and comparing data. Final Act.

10, Answer 3 (citing *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, (Fed. Cir. 2011) and *Electric Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016)).

Appellants argue the Examiner’s analysis is in error as the claim recites “the tangible, rather than abstract, actions of: providing, creating, simulating, calculating, and then making alterations, as opposed to an abstract idea such as envisioning, or desiring, to make alterations” and as such, “[t]he claim is directed toward more than simply an idea of itself.” App. Br. 2.

We concur with the Examiner’s finding that representative claim 1 recites elements directed to a mental process. Claim 1 recites limitations “providing the product’s environmental sensitivity profile”; “providing the product’s shipment configuration profile”; and “defining a product shipment path.” These limitations are data gathering steps, which typically do not make an otherwise non-statutory claim statutory. *CyberSource*, 654 F.3d at 1370 (“mere data-gathering steps cannot make an otherwise non-statutory claim statutory”) (internal quotation marks, bracketed alterations, and citations omitted). The step of “creating a weather model associated with the product shipment path” is discussed in Appellants’ Specification as having a broad scope, being based upon heat and mass transfer principles or may be simply assigning a constant value. Spec. 3, ll. 23–24, 4, ll. 11–15. Thus, the broadest reasonable interpretation, is that the creation of a model as merely selecting a constant value, which is also a data gathering step. When, interpreting the model as just a constant value, the steps of “simulating the weather along the path”; “calculating an environmental exposure of the product”; and determining the adverse product effects are

steps that a person can perform in their mind (an observation, evaluation, or judgment), and as such the claim recites a mental process. Our reviewing court, in the *Electric Power* decision, cited by the Examiner, states “we have 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.” *Electric Power Grp.*, 830 F.3d at 1354. Finally, the step of “altering at least one of the: product, shipment configuration, and product shipment path” are also steps a person could perform in their mind, a judgment.

We are not persuaded by Appellants’ argument that the Examiner erred as the claim recites a tangible change in the system. As discussed above, the claim merely recites data gathering and analysis, steps a person could do in their mind, as such the claim recites a mental process. The step of “altering one of the: product, shipment configuration and product shipment path” does not recite a specific change in the product (a tangible change), rather it is just one alternative which is generically discussed in the Specification and recited in the claim (*see* Spec. 8, ll. 15–17). Similarly altering the shipment configuration or the path, is not a tangible change, rather just a change in the planed logistics for the shipment. Thus, Appellants’ arguments have not persuaded us the Examiner erred in finding claim 1 recites an abstract idea.

#### Practical Application/Significantly more than Abstract Idea

The Examiner finds that the claim does not include additional elements that are sufficient to amount to more than the judicial exception.  
Final Act.

10. Appellants contend that the claim is directed to machines associated with defining transport logistics and is directed to more than an abstract idea. App. Br. 3.

We are not persuaded of error and concur with the Examiner. Claim 1 recites a “computer implemented method” and as discussed above, the remainder of the limitations are directed to data gathering, and analysis that a person could do in their mind. The recitation of the analysis being performed on a computer is insufficient to transform the abstract idea to patent eligible subject matter. “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].’” *Alice*, 573 U.S. at 221 (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.* Appellants’ Specification describes the method as directed to solving the time-consuming problem of determining environmental exposure of a product during transit. Spec. 1, ll. 19–28. Thus, the method is not directed to improving the operation of the computer, or a specific machine, rather it is a method for use in planning. Further, as discussed above, the final method step of altering does not result in the transformation of a product, and is just a plurality of alternative solutions, which are generically discussed in the Specification.

Finally, the Examiner finds that the claim does not recite the use of any novel or non-routine components. Answer 4. Appellants have not contested this finding. Further, Appellants’ Specification discusses using a generic computer to perform the claimed method further providing support for the Examiner’s findings. *See* Spec. 11, ll. 8–25. Accordingly, we concur

with the Examiner that claim 1 recites using well-known, routine, and conventional devices.

In summary, Appellants' arguments have not persuaded us of error in the Examiner's determination that the claim is directed to an abstract idea; a mental process (an observation, evaluation, and judgement). Further, Appellants' arguments have not persuaded us that the Examiner erred in finding that the claim is not directed to: an improvement in the functioning of the computer or to other technology or other technical fields; a particular machine; performing or affecting a transformation of an article to a different state or thing; and/or using a judicial exception in some meaningful way beyond linking the exception to a particular technological environment such that the claim as a whole is more than a drafting effort to monopolize the judicial exception.

Accordingly, we sustain the Examiner's rejection of claim 1 under 35 U.S.C. § 101 as being directed to patent ineligible subject matter.

Rejection under 35 U.S.C. § 102(a)(1)

Appellants' arguments recite limitations d) through h) of claim 1 and assert that they are not taught by Hoyt and specifically asserts that step d) is not taught. App. Br. 5. Appellants argue that Hoyt teaches providing ambient temperature data from a database and that gathering data is not creation of a temperature model. *Id.* Appellants state the claim is to "creation of a mathematical model of the weather relevant to the selected travel route not merely gathering historical data." App. Br. 5–6. Appellants argue that Hoyt teaches the temperature data is applied to the product container rather than "using the claimed weather model to simulate the

weather along the route in all of its possible variations.” *Id.* at 6. Further Appellants argue, “[a]s no weather model was created and no simulation of the weather was undertaken, no calculation of an environmental exposure based upon the simulated weather, determination of an adverse effect according to the calculated environmental exposure, or alteration according to the determined adverse effect is possible.” *Id.*

The Examiner provides a comprehensive response finding that Hoyt teaches using the ambient temperature along the defined route meets the claimed weather model. Answer 5–6 (citing Hoyt, col. 6, ll. 1–7). We concur with the Examiner. We note claim 1 does not recite the model is a mathematical model, and as discussed above, the model may just be a constant temperature and an ambient temperature. *See generally* Spec. 3, 4. Further, in as much as Appellants’ arguments are drawing a distinction between temperature and weather, which is neither claimed or required by the Specification, and Hoyt contemplates tracking other environmental parameters of weather such humidity and cloud cover (*see* col. 5, ll. 1–4, 11–12, col. 10, ll. 3–10, col. 11, ll. 29–30). Thus we are not persuaded that the Examiner erred in finding that Hoyt teaches limitation d) directed to the weather model.

Appellants’ arguments directed to limitations e) through h) are premised upon Hoyt not teaching the modeling limitation of limitation d) and are, thus, not persuasive for the reasons discussed above. Nonetheless, the Examiner has provided a detailed response with respect to the limitations of e) simulating, f) calculating environmental exposure, g) determining adverse product effects, and h) altering product or shipment, explaining how Hoyt teaches these limitations. Answer 6–8 (citing col. 6, ll. 7–14, 18–24,

and col. 8, ll. 50–54). We have reviewed the teachings cited by the Examiner and concur. We additionally note that claim 1 does not recite simulating “the weather along the route in all of its possible variations” as argued by Appellants on page 6 of the Brief. Thus, we are not persuaded of error in the Examiner’s anticipation rejection of claim 1 and we sustain the rejection.

#### DECISION

We affirm the Examiner’s rejections of claim 1 under 35 U.S.C. § 101 and under 35 U.S.C. § 102(a)(1).

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