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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DAVID BOBERSKI, EDWARD M. GOGOL, JOHN WILEY,
RICHARD CO, STEVE YOUNGREN, and JOHN LABUSZEWSKI

Appeal 2018-004237
Application 15/079,266
Technology Center 3600

Before MURRIEL E. CRAWFORD, ANTON W. FETTING, and
JOSEPH A. FISCHETTI, *Administrative Patent Judges*.

FISCHETTI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant¹ seeks our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1–31. We have jurisdiction under 35 U.S.C. § 6(b). A hearing was held on February 3, 2020.

SUMMARY OF DECISION

We AFFIRM.

¹ We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as Chicago Mercantile Exchange Inc. Appeal Br. 2.

THE INVENTION

Appellant describes “[a] system for moving money between accounts of traders by a central counterparty to facilitate payments.” Spec. Abstract.

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

A computer implemented method of facilitating a payment between traders based on a first position in a first instrument held by a first trader to which a second trader is a counterparty, the method comprising:

determining, by a payment processor based on the first position, the amount of a payment to be made from one of the first or second trader to the other of the first or second trader in advance of settlement thereof;

assigning, automatically by the payment processor based on the first position in the first instrument held by the first trader to which the second trader is a counterparty, a second position to the first trader in a futures contract characterized by a settlement date, a quantity and a price, the second position being characterized by a value based on the quantity and the price of the futures contract as of the assigning, and a third position to the second trader, counter to the second position, in the futures contract, the first and second traders not being identified to each other;

valuing, by a settlement processor upon occurrence of the settlement date, the futures contract at a spot value different from the price of the futures contract, the spot value being based on the determined payment amount; and

modifying, by a margin processor, a first account record associated with the first trader and a second account record associated with the second trader, both stored in an account database stored in a memory coupled with the processor, to reflect a credit to the account of the first trader and a debit from the account of the second trader in the amount of the difference between the value of the second position and the spot value when the difference represents a loss for the second trader or to

reflect a debit from the account of the first trader and a credit to the account of the second trader in the amount of the difference between the value of the second position and the spot value when the difference represents a loss for the first trader.

THE REJECTION

Claims 1–31 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 3–9 in the Final Office Action² and on pages 3–11 in the Examiner’s Answer³, concerning only the 35 U.S.C. § 101 rejection.

ANALYSIS

35 U.S.C. § 101 REJECTION

We will affirm the rejection of claims 1–31 under 35 U.S.C. § 101.

The Appellant argues claims 1–31 as a group. 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

² All references to the Final Office Action refer to the Final Office Action mailed on March 27, 2017.

³ All references to the Examiner’s Answer refer to the Examiner’s Answer mailed on January 12, 2018.

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

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

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

In so doing, as indicated above, we apply a “directed to” two prong test: 1) evaluate whether the claim recites a judicial exception, and 2) if the claim recites a judicial exception, evaluate whether the claim “appl[ies], rel[ies] on, or use[s] the judicial exception in a manner that imposes a

meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception.” Guidance at 53; *see also* MPEP §§ 2106.05(a)–(c), (e)–(h).

The Specification states:

A futures contract is a legally binding agreement to buy or sell a commodity at a specified price at a predetermined future time. An option is the right, but not the obligation, to sell or buy the underlying instrument (in this case, a futures contract) at a specified price within a specified time. Each futures contract is standardized and specifies commodity, quality, quantity, delivery date and settlement. Cash Settlement is a method of settling a futures contracts by cash rather than by physical delivery of the underlying asset whereby the parties settle by paying/receiving the loss/gain related to the contract in cash when the contract expires.

Spec. ¶ 2.

The Specification then goes on to state:

As an intermediary, the Exchange bears a certain amount of risk in each transaction that takes place. To that end, risk management mechanisms protect the Exchange via the Clearing House. The Clearing House establishes clearing level performance bonds (margins) for all Exchange products and establishes minimum performance bond requirements for customers of Exchange products. A performance bond, also referred to as a margin, is the funds that must be deposited by a customer with his or her broker, by a broker with a clearing member or by a clearing member with the Clearing House, for the purpose of insuring the broker or Clearing House against loss on open futures or options contracts. . . . The initial margin is the total amount of margin per contract required by the broker when a futures position is opened. A drop in funds below this level requires a deposit back to the initial margin levels, i.e. a performance bond call. If a customer’s equity in any futures position drops to or under the maintenance level

because of adverse price action, the broker must issue a performance bond/margin call to restore the customer's equity.

Spec. ¶ 4.

The preamble says it is for “facilitating a payment between traders based on a first position in a first instrument held by a first trader to which a second trader is a counterparty.” Appeal Br. 18, Claim 1. Understood in light of the Specification, claim 1 recites in pertinent part, the abstractions of:

determining, . . . based on the first position, the amount of a payment to be made from one of the first or second trader to the other of the first or second trader in advance of settlement thereof; assigning, . . . based on the first position in the first instrument held by the first trader to which the second trader is a counterparty, a second position to the first trader in a futures contract characterized by a settlement date, a quantity and a price, the second position being characterized by a value based on the quantity and the price of the futures contract as of the assigning, and a third position to the second trader, counter to the second position, in the futures contract, the first and second traders not being identified to each other; valuing, . . . upon occurrence of the settlement date, the futures contract at a spot value different from the price of the futures contract, the spot value being based on the determined payment amount; and modifying, . . ., a first account record associated with the first trader and a second account record associated with the second trader, . . ., to reflect a credit to the account of the first trader and a debit from the account of the second trader in the amount of the difference between the value of the second position and the spot value when the difference represents a loss for the second trader or to reflect a debit from the account of the first trader and a credit to the account of the second trader in the amount of the difference between the value of the second position and the spot value when the difference represents a loss for the first trader.

Accordingly, the Examiner found that the claims recite “facilitating a payment between traders based on a first position in a first instrument held by a first trader to which a second trader is a counterparty.” Final Act. 3.

Thus, all this intrinsic evidence shows that claim 1 recites a method of anonymized data and transaction processing facilitating necessary crediting and debiting of accounts to indirectly effect a transfer there between by leveraging existing risk management techniques. For example, claim 1 recites, “assigning... based on the first position in the first instrument held by the first trader to which the second trader is a counterparty, a second position to the first trader in a futures contract characterized by a settlement date, a quantity and a price, the second position being characterized by a value based on the quantity and the price of the futures contract as of the assigning, and a third position to the second trader, counter to the second position, in the futures contract, the first and second traders not being identified to each other; valuing, upon occurrence of the settlement date, the futures contract at a spot value different from the price of the futures contract, the spot value being based on the determined payment amount.” Covering the value of an item between trade and settlement dates is an important economic practice because it encourages trading between parties and counterparties by appropriating any value change in that period to the proper party. This is consistent with the Examiner’s determination.

Turning to the second prong of the “directed to” test, claim 1 only generically requires “a payment processor,” “a settlement processor,” and “a margin processor.” These components are described in the Specification at a high level of generality. *See* Spec. ¶¶ 30, 31, 33–36, Fig. 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 at 53. We find no indication in the Specification, nor does Appellant direct us to any indication, that the operations recited in independent claim 1 invoke any assertedly inventive programming, require any specialized computer hardware or other inventive computer components, i.e., a particular machine, or that the claimed invention is implemented using other than generic computer components to perform generic computer functions. *See DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014) (“[A]fter *Alice*, there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible.”). Claim 1 does not improve another technology, because neither creating a queue or generating a recommendation involves technology. Guidance at 55; *see also* MPEP § 2106.05(a). Because no more than a generic computer is required, the claim also does not define, or rely on, a “particular machine.” MPEP § 2106.05(b). Further, the method does not transform matter. MPEP § 2106.05(c). Instead, the claim merely assimilates, creates, generates, evaluates, replaces, and makes determinations about data. As such, the method has no other meaningful limitations (MPEP § 2106.05(e)), and thus merely recites instructions to execute the abstract idea on a computer (MPEP § 2106.05(f)).

Thus, we find that the claims recite the judicial exception of a fundamental economic practice.

That the claims do not preempt all forms of the abstraction or may be limited to futures contracts, 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*, 566 U.S. at 72–73).

Concerning this step, the Examiner found the following:

[T]he Examiner submits that the claims do not amount to “significantly more” than the judicial exception because Although a computer system acts as the intermediary in the claimed method, the claims do no more than implement the abstract idea on a generic computer. All of these computer functions . . . are “well understood, routine, conventional activities” previously known to the industry. The computer is employed for its most basic functions and does not impose meaningful limits on the scope of the claims. Generic computer implementation of the abstract idea in a generic manner with a high level of generality does not qualify as significantly more than the abstract idea. Therefore the claims do not purport to improve the functioning of the computer itself, or to improve any other technology or technical field. Use of an unspecified computer does not transform an abstract idea into a patent-eligible invention. Thus, the claim does not amount to significantly more than the abstract idea itself.

Final Act. 3–4.

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 determine, assign, calculate values, and modify the 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 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 affect 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. ¶¶ 30, 31, 33–36, Fig. 1, 2. 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 225–26.

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 (determine, assign, calculate values, and modify the 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. (Appeal Br. 5–16, Reply Brief 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,

the claimed invention improves upon the technical field of anonymized data and transaction processing by providing a system which efficiently facilitates the necessary crediting and debiting of accounts to indirectly effect a transfer there between and which leverages existing risk management systems/techniques, in a novel and specific manner, to do so.

Appeal Br. 7.

We are unpersuaded by Appellant’s argument because the alleged improvement lies in the abstract idea itself, not to any technological improvement— facilitating the necessary crediting and debiting of accounts. *See BSG Tech LLC v. BuySeasons, Inc.*, 899 F.3d 1281, 1287–88 (Fed. Cir. 2018). Even if the advance over the prior art is to “efficiently facilitate necessary crediting and debiting of accounts to indirectly effect a transfer therebetween,” that purported advance is an abstract idea itself, i.e., performing an accounting practice, a fundamental economic process or practice similar to hedging against financial risk in *Bilski*, 561 U.S. at 609, and collecting and analyzing investment data in *SAP America, Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1167–68 (Fed. Cir. 2018), using conventional technology. Also, although the claims purport to efficiently facilitate the necessary crediting and debiting of accounts to indirectly effect a transfer, our reviewing court has held that speed and accuracy increases stemming from the ordinary capabilities of a general purpose computer “do[] not materially alter the patent eligibility of the claimed subject matter.” *Bancorp Servs., L.L.C. v. Sun Life Assurance Co. of Can. (U.S.)*, 687 F.3d 1266, 1278 (Fed. Cir. 2012).

Appellant argues, the claimed steps recite

a specific implementation which has NOT been used before and therefore is not well understood, routine or conventional in the art. In particular, as noted below, the claimed invention operates in a manner which upends the known margin computation process by valuing the claimed second position based on a previously determined payment amount so as to cause the margining system to move that amount, as opposed to valuing the position based on a current market value so as to determine a change, e.g. gain or loss, thereto.

Appeal Br. 10.

Although the second step in the *Mayo/Alice* framework is termed a search for an “inventive concept,” the analysis is not an evaluation of novelty or non-obviousness, but rather, a search for “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 217–218 (alteration in original). A novel and non-obvious claim directed to a purely abstract idea is, nonetheless, patent-ineligible. *See Mayo*, 566 U.S. at 90; *see also Diamond v. Diehr*, 450 U.S. at 188–89 (“The ‘novelty’ of any element or steps in a process, or even of the process itself, is of no relevance in determining whether the subject matter of a claim falls within the § 101 categories of possibly patentable subject matter.”). The question in step two of the *Alice* framework is not whether an additional feature is novel, but whether the implementation of the abstract idea involves “more than performance of ‘well-understood, routine, [and] conventional activities previously known to the industry.’” *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat’l Ass’n*, 776 F.3d 1343, 1347–48 (Fed Cir. 2014) (alteration in original) (quoting *Alice*, 573 U.S. at 225). Here, the record reflects no evidence by Appellant to the contrary.

Appellant argues:

As in *Trading Technologies Int’l, Inc. v. CQG, Inc.*^[4], the presently claimed invention is directed to a specific improvement to the way computers operate as the claimed system and method for facilitating payment imparts a specific

⁴ *Trading Technologies Int’l, Inc. v. CQG, Inc.*, 675 F. App’x 1001 (Fed. Cir. 2017).

functionality to a trading system directed to a specific implementation of a solution to a problem in the software arts, i.e. to move a pre-defined value between accounts in an anonymized transaction processing system using a risk management system.

Appeal Br. 14–15.

We disagree with Appellant. In *Trading Technologies*, that court found

the challenged patents do not simply claim displaying information on a graphical user interface. The claims require a specific, structured graphical user interface paired with a prescribed functionality directly related to the graphical user interface’s structure that is addressed to and resolves a specifically identified problem in the prior state of the art.

Trading Techs., 675 F. App’x at 1004. By contrast, claim 1 before us here recites no such computer related specific features. At best, it only generically recites, a payment processor, a settlement processor, and a margin processor. We find no indication in the Specification, nor does Appellant direct us to any indication, that the operations recited in independent claim 1 invoke any inventive programming, require any specialized computer hardware or other inventive computer components, i.e., a particular machine, or that the claimed invention is implemented using other than generic computer components to perform generic computer functions. *See DDR Holdings*, 773 F.3d at 1256 (“[A]fter *Alice*, there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible.”). The claim simply recites functional results to be achieved by any means. *See, e.g., Content Extraction*, 776 F.3d at 1347 (“[T]he claims of the asserted patents are drawn to the abstract idea of 1) collecting data, 2) recognizing certain data

within the collected data set, and 3) storing that recognized data in a memory.”); *Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1339–40 (Fed. Cir. 2017) (Claims to manipulating documents determined to be “at their core, directed to the abstract idea of collecting, displaying, and manipulating data.”); *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1369–70 (Fed. Cir. 2015) (Tailoring information presented to a user based on particular information determined to be directed to an abstract idea.)

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 a whole is focused on satisfying certain contingencies for managing data related to a financial transaction and not a particular way of programming or designing the software or a computer circuit. In other words, nothing in claim 1 purports to improve computer functioning or “effect an improvement in any other technology or technical field.” *Alice*, 573 U.S. at 225.

Appellant further argues:

Just as DDR’s unique URL structure allowed the generic computers of DDR to do something different, i.e. prevent user’s from being transported away from the host’s web page to a third party’s web page, so too does Appellants’ unique claimed automatically created second and third positions which cause the payment processor to operate in a nongeneric manner, i.e. to credit/debit the accounts of the traders based on a predefined fixed amount, different from the conventional operation to credit or debit the accounts of the traders based on a variable present market value of an underlying asset.

Reply Br. 5.

We fail to see the similarities asserted by Appellant (Reply Br. 5–6) between the claims on appeal here and those adjudicated in *DDR Holdings*. In *DDR Holdings*, the Court evaluated the eligibility of claims “address[ing] the problem of retaining website visitors that, if adhering to the routine, conventional functioning of Internet hyperlink protocol, would be instantly transported away from a host’s website after ‘clicking’ on an advertisement and activating a hyperlink.” *DDR Holdings*, 773 F.3d at 1257. There, the Court found that the claims were patent eligible because they transformed the manner in which a hyperlink typically functions to resolve a problem that had no “pre-Internet analog.” *Id.* at 1258. In our view, Appellant wrongly seeks equivalents between its claimed created second and third positions and the smart hyperlink in *DDR Holdings*. The *DDR Holdings* court was clear as to the internet–centric and computer based nature of the improvement with which they were dealing, stating:

In particular, the '399 patent’s claims address the problem of retaining website visitors that, if adhering to the routine, conventional functioning of Internet hyperlink protocol, would be instantly transported away from a host’s website after “clicking” on an advertisement and activating a hyperlink. For example, asserted claim 19 recites a system that, among other things, 1) stores “visually perceptible elements” corresponding to numerous host websites in a database, with each of the host websites displaying at least one link associated with a product or service of a third-party merchant, 2) on activation of this link by a website visitor, automatically identifies the host, and 3) instructs an Internet web server of an “out-source provider” to construct and serve to the visitor a new, hybrid web page that merges content associated with the

products of the third-party merchant with the stored “visually perceptible elements” from the identified host website.

DDR Holdings, 773 F.3d at 1257. By contrast, Appellant asserts that the claimed “automatically created second and third positions which cause the payment processor to operate in a nongeneric manner, i.e. to credit/debit the accounts of the traders based on a predefined fixed amount,” is equivalent to the unique *DDR* hyperlink. Reply Br. 5. But, this is nothing more than general purpose programming assigning values to accounting variables devoid of any of the specifically claimed programming and devices, such as recited in claim 19 in the ‘399 patent as listed above as items 1–3 by the *DDR Holdings* court. Simply programming a general-purpose computer or generic circuitry to perform an abstract idea does not provide an “inventive concept” such that the claim amounts to significantly more than that abstract idea. *See Alice*, 573 U.S. at 221–27 (applying an abstract idea, such as an algorithm, on a general purpose computer is not enough to transform a patent-ineligible abstract idea into a patent-eligible invention.); *EON Corp. IP Holdings LLC v. AT&T Mobility LLC*, 785 F.3d 616, 623 (Fed. Cir. 2015) (“A general purpose computer is flexible—it can do anything it is programmed to do.”).

We also disagree with Appellant that under the holding in *Enfish* our decision would be different. Appeal Br. 15–16. By contrast, we are unpersuaded by the Appellant’s argument that its claims are directed to an improvement in computer technology like that of claim 17 in *Enfish* and therefore are patent eligible. In *Enfish*, the invention at issue was directed at a wholly new type of logical model for a computer database: a self-

referential table that allowed the computer to store many different types of data in a single table and index that data by column and row information. *Enfish*, 822 F.3d at 1330–32. In finding the claims “not directed to an abstract idea,” but “to a specific improvement to the way computers operate,” the Federal Circuit noted that “the claims are not simply directed to *any* form of storing tabular data, but instead are specifically directed to a *self-referential* table for a computer database.” *Enfish*, 822 F.3d at 1336–37. We find nothing in the claims before us arising to this level of technical improvement in the generically claimed “a payment processor,” “a settlement processor” and “a margin processor” which arises to the level of technical proficiency as found in *Enfish*. Instead, we find the claims are focused on “economic or other tasks for which a computer is used in its ordinary capacity.” *Enfish*, 822 F.3d 1336.

Likewise unpersuasive are Appellant’s analogies of the appealed claims to those in *Amdocs (Israel) Limited v. Openet Telecom, Inc.*, 841 F.3d 1288 (Fed. Cir. 2016). Appeal Br. 16–17. 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 1300–01.

In this way, the claims of *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*, 773 F.3d 1245; *McRO, Inc.*, 837 F.3d at 1315. 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.

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

For the reasons identified above, we determine there are no deficiencies in the Examiner’s rejection based on patent ineligibility of the rejected claims. Therefore, we will sustain the Examiner’s § 101 rejection of claims 1–31.

CONCLUSIONS OF LAW

We conclude the Examiner did not err in rejecting claims 1–31 under 35 U.S.C. § 101. The Examiner’s decision is affirmed. *See* 37 C.F.R. § 41.50(a)(1).

DECISION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/ Basis	Affirmed	Reversed
1– 31	101	Eligibility	1–31	

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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