UNITED STATES PATENT AND TRADEMARK OFFICE

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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 RAJ S. RAJAGOPAL and LARRY JAY THOMAS

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Appeal 2018-005011
Application 13/655,307[1]
Technology Center 3600

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Before JOHN A. EVANS, JENNIFER L. McKEOWN, and
JAMES W. DEJMEK, *Administrative Patent Judges.*

DEJMEK, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from a Final Rejection of
claims 1–3, 7–12, 16–21, and 25–27. Appellants have canceled claims 4–6,
13–15, and 22–24. Br. 24–32. We have jurisdiction over the remaining
pending claims under 35 U.S.C. § 6(b).

We affirm.

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STATEMENT OF THE CASE

Introduction

Appellants' disclosed and claimed invention generally relates to performing a payment. Spec. ¶ 1. In particular, Appellants disclose embodiments wherein electronic money movements involving multiple clearing accounts are performed via the Automated Clearing House (ACH) network. Spec. ¶¶ 13–14, 16.

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

1.   A method to perform a payment, comprising:

receiving, by a payment service provider, a request from a payer to pay a payee,

> wherein the request identifies a payer's payment account held at a payer financial institution and a payee's payment account held at a payee financial institution,

> wherein the payment service provider is a separate entity from the payer financial institution and the payee financial institution, and

> wherein the payer financial institution is an external entity to the payee financial institution;

transferring, using an intra-bank electronic funds transfer (EFT) capability of the payer financial institution within a single business day of receiving the request by the payment service provider, a payment amount from the payer's payment account to a sending clearing account (SCA) that is held at the payer financial institution and controlled by the payment service provider,

> wherein transferring the payment amount to the SCA comprises debiting the payer's payment account based on a clearing finite state machine, and

> wherein the SCA is restricted from being accessed by the payer and the payee;

transferring, using the intra-bank EFT capability of the payee's financial institution within the single business day of transferring the payment amount from the payer's payment account to the SCA, the payment amount to the payee's payment account from a receiving clearing account (RCA) held at the payee financial institution on behalf of and controlled by the payment service provider,

wherein transferring the payment amount from the RCA comprises crediting the payee's payment account based on a settlement finite state machine, and

wherein the RCA is restricted from being accessed by the payer and the payee;

and

reimbursing, in response to transferring the payment amount from the payer's payment account to the SCA and from the RCA to the payee's payment account, the RCA from the SCA,

wherein reimbursing the RCA from the SCA comprises asynchronously reimbursing the RCA via a central clearing account (CCA) and asynchronously reimbursing the CCA from the SCA,

wherein the CCA is held at a sponsoring bank and controlled by the payment service provider, and

wherein reimbursing the RCA uses a first payment network that differs from a second payment network that is used to reimburse the CCA.

The Examiner's Rejection

Claims 1–3, 7–12, 16–21, and 25–27 stand rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. Final Act. 3–14.

ANALYSIS[2]

Appellants dispute the Examiner's conclusion that the pending claims are directed to patent-ineligible subject matter. Br. 10–20. In particular, rather than being directed to a fundamental economic practice, Appellants argue the pending claims "describe[] an improvement to the money-movement mechanisms of conventional payment networks . . . in order to decrease the latency of such networks." Br. 14–15. Accordingly, Appellants contend the Examiner's reliance on *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350 (Fed. Cir. 2014) is misplaced. Br. 15. Further, Appellants assert the claims describe a software improvement to a computer network's performance. Br. 15–16 (citing *McRO, Inc. v. Bandai Namco Games Am., Inc.*, 837 F.3d 1299 (Fed. Cir. 2016)); *see also* Br. 19–20 (asserting dependent claims 7, 16, and 25 further recite specific details regarding an improvement to money-movement mechanisms of conventional payment networks). Moreover, Appellants assert the claims provide an inventive concept because the claims recite a solution necessarily rooted in computer technology and set forth an unconventional arrangement of elements. Br. 17–19 (citing *BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016) and *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014)).

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[2] Throughout this Decision, we have considered the Appeal Brief, filed January 2, 2018 ("Br."); the Examiner's Answer, mailed February 16, 2018 ("Ans."); and the Final Office Action, mailed August 1, 2017 ("Final Act."), from which this Appeal is taken. Appellants did not file a Reply Brief. To the extent Appellants have not advanced separate, substantive arguments for particular claims or issues, such arguments are considered waived. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2017).

The Supreme Court's two-step framework guides our analysis of patent eligibility under 35 U.S.C. § 101. *Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208, 217 (2014). In addition, the Office recently published revised guidance for evaluating subject matter eligibility under 35 U.S.C. § 101, specifically with respect to applying the *Alice* framework. USPTO, *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019) ("Office Guidance"). If a claim falls within one of the statutory categories of patent eligibility (i.e., a process, machine, manufacture, or composition of matter) then the first inquiry is whether the claim is directed to one of the judicially recognized exceptions (i.e., a law of nature, a natural phenomenon, or an abstract idea). *Alice*, 573 U.S. at 217. As part of this inquiry, we must "look at the 'focus of the claimed advance over the prior art' to determine if the claim's 'character as a whole' is directed to excluded subject matter." *Affinity Labs of Tex., LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1257 (Fed. Cir. 2016).

Per Office Guidance, this first inquiry has two prongs of analysis: (i) does the claim recite a judicial exception (e.g., an abstract idea), and (ii) if so, is the judicial exception integrated into a practical application. 84 Fed. Reg. at 54. Under the Office Guidance, if the judicial exception is integrated into a practical application, *see infra*, the claim is patent eligible under § 101. 84 Fed. Reg. at 54–55. If the claim is directed to a judicial exception (i.e., recites a judicial exception and does not integrate the exception into a practical application), the next step is to determine whether any element, or combination of elements, amounts to significantly more than the judicial exception. *Alice*, 573 U.S. at 217; 84 Fed. Reg. at 56.

Here, we conclude Appellants' claims recite an abstract idea within the category of certain methods of organizing human activity—i.e., a fundamental economic practice. In particular, Appellants' claims are generally directed to performing a payment via electronic money movement using multiple clearing accounts. This is consistent with how Appellants describe the claimed invention. *See* Spec. ¶¶ 1, 14, 16 (describing the invention as a method to perform a payment in which "the instant payment transaction involves asynchronous money movements in a multiple-clearing-accounts configuration"). Similar to the concept of intermediated settlement, the use of clearing accounts (i.e., third parties) is a "building block of the modern economy." *Alice*, 573 U.S. at 220. As discussed in *Alice*,

> the concept of intermediated settlement is " 'a fundamental economic practice long prevalent in our system of commerce.' " *Ibid.* [(quoting *Bilski v. Kappos*, 561 U.S. 593, 611 (2010)]; *see, e.g.*, Emery, Speculation on the Stock and Produce Exchanges of the United States, in 7 Studies in History, Economics and Public Law 283, 346–356 (1896) (discussing the use of a "clearing-house" as an intermediary to reduce settlement risk). The use of a third-party intermediary (or "clearing house") is also a building block of the modern economy. *See, e.g.*, Yadav, The Problematic Case of Clearinghouses in Complex Markets, 101 Geo. L.J. 387, 406–412 (2013); J. Hull, Risk Management and Financial Institutions 103–104 (3d ed. 2012). Thus, intermediated settlement, like hedging, is an "abstract idea" beyond the scope of § 101.

Alice, 573 U.S. at 219–20. Accordingly, consistent with our Office Guidance and case law, we conclude that performing a payment via electronic money movement using multiple clearing accounts is a certain method of organizing human activity (e.g., a fundamental economic practice), and therefore an abstract idea. *See* 84 Fed. Reg. at 52; *see also*

Bilski v. Kappos, 561 U.S. 593, 611–12 (2010) (concluding that hedging is a "fundamental economic practice" and therefore an abstract idea); *Alice*, 573 U.S. at 220 (describing the concept of risk hedging identified as an abstract idea in *Bilski* as "a method of organizing human activity"); *Dealertrack, Inc. v. Huber*, 674 F.3d 1315, 1333–34 (Fed. Cir. 2012) (concluding the claims were directed to an abstract idea of using a clearinghouse process).

Claim 1 is reproduced below and includes the following claim limitations that recite performing a payment via electronic money movement using multiple clearing accounts, emphasized in *italics*:

> 1. A method to perform a payment, comprising:
>
> *receiving*, by a payment service provider, *a request from a payer to pay a payee*,
>
>> wherein the request identifies a payer's payment account held at a payer financial institution and a payee's payment account held at a payee financial institution,
>>
>> wherein the payment service provider is a separate entity from the payer financial institution and the payee financial institution, and
>>
>> wherein the payer financial institution is an external entity to the payee financial institution;
>
> *transferring*, using an intra-bank electronic funds transfer (EFT) capability of the payer financial institution within a single business day of receiving the request by the payment service provider, *a payment amount from the payer's payment account to a sending clearing account (SCA)* that is held at the payer financial institution and controlled by the payment service provider,
>
>> wherein transferring the payment amount to the SCA comprises debiting the payer's payment account based on a clearing finite state machine, and
>>
>> wherein the SCA is restricted from being accessed by the payer and the payee;

transferring, using the intra-bank EFT capability of the payee's financial institution within the single business day of transferring the payment amount from the payer's payment account to the SCA, *the payment amount to the payee's payment account from a receiving clearing account (RCA)* held at the payee financial institution on behalf of and controlled by the payment service provider,

wherein transferring the payment amount from the RCA comprises crediting the payee's payment account based on a settlement finite state machine, and

wherein the RCA is restricted from being accessed by the payer and the payee;

and

reimbursing, in response to transferring the payment amount from the payer's payment account to the SCA and from the RCA to the payee's payment account, *the RCA from the SCA*,

wherein reimbursing the RCA from the SCA comprises asynchronously reimbursing the RCA via a central clearing account (CCA) and asynchronously reimbursing the CCA from the SCA,

wherein the CCA is held at a sponsoring bank and controlled by the payment service provider, and

wherein reimbursing the RCA uses a first payment network that differs from a second payment network that is used to reimburse the CCA.

More particularly, the concept of performing a payment via electronic money movement using multiple clearing accounts comprises (i) receiving a request to perform the payment (i.e., the claimed step of receiving a request from a payer to pay a payee); (ii) transferring funds from the payer to a first clearing account (i.e., the claimed step of transferring a payment amount from the payer's account to a sending clearing account (SCA)); (iii) transferring funds to a payee's account from a second clear account (i.e., the claimed step of transferring a payment amount to the payee's account

from a receiving clearing account (RCA)); and (iv) reimbursing the second clearing account from the first clearing account (i.e., the claimed step of reimbursing the RCA from the SCA).

Because the claim recites a judicial exception, we next determine whether the claim integrates the judicial exception into a practical application. 84 Fed. Reg. at 54. To determine whether the judicial exception is integrated into a practical application, we identify whether there are "*any additional elements recited in the claim beyond the judicial exception(s)*" and evaluate those elements to determine whether they integrate the judicial exception into a recognized practical application. 84 Fed. Reg. at 54–55 (emphasis added); *see also* Manual of Patent Examining Procedure ("MPEP") § 2106.05(a)–(c), (e)–(h) (9th ed. Rev. 08.2017, Jan. 2018).

Here, we find the additional limitation(s) do not integrate the judicial exception into a practical application. More particularly, the claims do not recite: (i) an improvement to the functionality of a computer or other technology or technical field (*see* MPEP § 2106.05(a)); (ii) use a "particular machine" to apply or use the judicial exception (*see* MPEP § 2106.05(b)); (iii) a particular transformation of an article to a different thing or state (*see* MPEP § 2106.05(c)); or (iv) any other meaningful limitation (*see* MPEP § 2106.05(e)). *See also* 84 Fed. Reg. at 55. Rather, the additional elements merely refine the identified steps of the recited abstract idea. For example, the first three "wherein" clauses identify components of the payment request; specify the payment service provider is a separate entity from the payer financial institution and payee financial institution; and specify the payer financial institution is external to the payee financial institution. *See*

Mayo Collaborative Servs. v. Prometheus Labs., Inc., 566 U.S. 66, 78 (2012) (describing the "wherein" clauses were insufficient to transform the nature of the claim to a patent-eligible concept). Further, regarding the "transferring" limitations (i.e., from payer account to a sending clearing account and from a receiving clearing account to a payee account), the additional limitations merely indicate the transfer is based on a finite state machine (without more) and specifies certain access restrictions on the clearing accounts. Also, regarding the reimbursement of the receiving clearing account from the sending clearing account, the additional elements describe the use of an intermediary central clearing account and specify its relationship to the payment service provider. Additionally, contrary to Appellants' arguments (*see* Br. 19–20), the additional limitations recited in dependent claims 7, 16, and 25 do not confer patent eligibility to the abstract idea of the independent claims. Rather, these dependent claims merely add the additional step of transferring funds directly from the payer's account to a payee's account upon receipt of a failure indication of either a computer system or computer network. This alternative step merely reverts to a conventional approach of money movement. *See* Spec. ¶ 16.

The claims in *McRO*—unlike the claims here—recited a "specific . . . improvement in computer animation" using "unconventional rules" that related "sub-sequences of phonemes, timings, and morph weight sets" to automatically animate lip synchronization and facial expressions for three-dimensional characters that only human animators could previously produce. *McRO*, 837 F.3d at 1302–03, 1307–08, 1313–15. In *McRO*, "the incorporation of the claimed rules" improved an existing technological process. *McRO*, 837 F.3d at 1314. In contrast, Appellants' claims here do

not improve an existing technological process. Contrary to Appellants' assertions (*see* Br. 15–16), the claims do not improve the performance of a computer network, but instead use a network (e.g., ACH network) as a means to perform the electronic money movement. *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335–36 (Fed. Cir. 2016) (distinguishing between claims wherein the focus of the claims is on an improvement in computer capabilities and those that invoke a computer as a tool). The claims do not recite decreasing latency in the money movement mechanisms of conventional payment networks (see Br. 15), but rather use the existing intra-bank electronic funds transfer capabilities of financial institutions to transfer funds. The use of intra-bank electronic funds transfer (EFT) capabilities does not rise to the level of a "particular machine" to use the abstract idea. *See* MPEP § 2106.05(b).

Appellants' reliance on *Electric Power* is also misplaced. *See* Br. 17–18. In *Electric Power*, held the claims did not "go beyond requiring the collection, analysis, and display of available information in a particular field . . . ." *Elec. Power*, 830 F.3d at 1351. The court further noted the claims merely define a desirable result, but were not limited to inventive means of achieving the result. *Elec. Power*, 830 F.3d at 1351, 1354. Here, Appellants' claims do not go beyond the steps of receiving a payment request, transferring funds from a payer to a clear account, transferring funds from a second clearing account to a payee, and reimbursing the second clearing account from the first clearing account. The transfer of funds is merely "based on" a finite state machine

Similarly, Appellants' reliance on *BASCOM* is unpersuasive. *See* Br. 17–19. In *BASCOM*, the court found "the patent describes how its

particular arrangement of elements is a technical improvement," and, when construed in favor of BASCOM,[3] the claims may be read to improve an existing technological process. *BASCOM*, 827 F.3d at 1350. As discussed above, the claims do not improve an existing technological process, but rather uses the existing process to perform the abstract idea. Additionally, unlike the arrangement of elements (i.e., installation of a filtering tool at a specific location) in *BASCOM*, 827 F.3d at 1349–50, and contrary to Appellants' arguments (*see* Br. 18),[4] Appellants' claims do not recite a non-conventional and non-routine arrangement of known elements.

For at least the foregoing reasons, the claims do not integrate the judicial exception into a practical application.

Because we determine the claims are directed to an abstract idea or combination of abstract ideas, we analyze the claims under step two of *Alice* to determine if there are additional limitations that individually, or as an ordered combination, ensure the claims amount to "significantly more" than the abstract idea. *Alice*, 573 U.S. at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 72–73, 77–79 (2012)). As stated in the Office Guidance, many of the considerations to determine

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[3] In *BASCOM*, BASCOM appealed the district court's granting of a motion to dismiss under Fed. R. Civ. P. 12(b)(6). *BASCOM*, 827 F.3d at 1341.

[4] To the extent Appellants assert that "claim 1 provides unconventional steps that confine independent claim 1 to a particular application of monitoring and updating data profiles across a computer network," we disagree. Br. 18 (emphases omitted). Claim 1 of the instant application does not monitor or update data profiles across a data network. Thus, such argument is not persuasive of error at least because it is not commensurate in scope with the claim language. *See In re Self*, 671 F.2d 1344, 1348 (CCPA 1982) (limitations not appearing in the claims cannot be relied upon for patentability).

whether the claims amount to "significantly more" under step two of the *Alice* framework are already considered as part of determining whether the judicial exception has been integrated into a practical application. 84 Fed. Reg. at 56. Thus, at this point of our analysis, we determine if the claims add a specific limitation, or combination of limitations, that is not well-understood, routine, conventional activity in the field, or simply appends well-understood, routine, conventional activities at a high level of generality. 84 Fed. Reg. at 56.

Here, Appellants' claims do not recite specific limitations (or a combination of limitations) that are not well-understood, routine, and conventional. We agree with the Examiner that "[t]he functions of receiving, transferring, transferring, and reimbursing are well-understood, routine and conventional activities previously known in the computer industry." Final Act. 10; *see also buySAFE*, 765 F.3d at 1355 ("That a computer receives and sends the information over a network—with no further specification—is not even arguably inventive."). Additionally, Appellants disclose that "[e]mbodiments of the invention may be implemented on virtually any type of computer regardless of the platform being used." Spec. ¶ 112, Fig. 4 (illustrating a generic computer platform). Additionally, use of intra bank electronic funds transfer capability, the Access Clearing House network, and a finite state machine were well known features. *See* Spec. ¶ 10 ("well-known features have not been described in detail . . . .").

Additionally, to the extent Appellants contend the claims do not seek to tie-up an abstract idea (Br. 18, 20), we are unpersuaded of Examiner error. "[W]hile preemption may signal patent ineligible subject matter, the absence

of complete preemption does not demonstrate patent eligibility."
FairWarning IP LLC v. Iatric Sys., Inc., 839 F.3d 1089, 1098 (Fed. Cir.
2016) (quoting *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371,
1379 (Fed. Cir. 2015); *see also OIP Techs., Inc. v. Amazon.com, Inc.*, 788
F.3d 1359, 1362–63 (Fed. Cir. 2015)("[T]hat 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."). Further, "[w]here a
patent's claims are deemed only to disclose patent ineligible subject matter
under the *Mayo* framework, as they are in this case, preemption concerns are
fully addressed and made moot." *Ariosa*, 788 F.3d at 1379.

For the reasons discussed *supra*, we are unpersuaded of Examiner
error. Accordingly, we sustain the Examiner's rejection of claims 1–3, 7–
12, 16–21, and 25–27 under 35 U.S.C. § 101.

DECISION

We affirm the Examiner's decision rejecting claims 1–3, 7–12, 16–21,
and 25–27 under 35 U.S.C. § 101.

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.
§ 41.50(f).

AFFIRMED