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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/643,041	10/23/2012	Ezekiel Kruglick	MTCW002902	4591
154241	7590	09/26/2019	EXAMINER	
IP Spring - AI 180 N. LaSalle St. Suite 3700 Chicago, IL 60601			GRIFFIN, TAMARA JEAN	
			ART UNIT	PAPER NUMBER
			3629	
			NOTIFICATION DATE	DELIVERY MODE
			09/26/2019	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte EZEKIEL KRUGLICK

Appeal 2018-005093
Application 13/643,041
Technology Center 3600

Before MARC S. HOFF, JOHN A. EVANS, and JASON J. CHUNG,
Administrative Patent Judges.

EVANS, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellant¹ seeks our review under 35 U.S.C. § 134(a) of the Examiner’s Final Rejection of claims 1, 4, 6–8, 10, 21, 24, 26–28, 30, and 67–74 which constitute all the claims pending in this application. App. Br. 5. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.²

¹ Appellant states Empire Technology Development LLC is the real party in interest. App. Br. 3.

² Rather than reiterate the arguments of Appellant and the Examiner, we refer to the Appeal Brief (filed January 22, 2018, “App. Br.”), the Reply Brief (none filed), the Examiner’s Answer (mailed February 16, 2018, “Ans.”), the Final Action (mailed August 24, 2017, “Final Act.”), and the Specification (filed July 6, 2017, “Spec.”) for their respective details.

STATEMENT OF THE CASE

The claims relate to a method of generating social network recruiting alerts. *See* Abstract.

Invention

Claims 1, 21, and 71 are independent. App. Br. 5. An understanding of the invention can be derived from a reading of claim 1, which is set forth in Table I, *infra*.

*Rejection*³

Claims 1, 4, 6–8, 10, 21, 24, 26–28, 30, and 67–74 stand rejected under 35 U.S.C. § 101 as directed to a judicial exception (abstract idea) without significantly more. Final Act. 2–12.

ANALYSIS

We have reviewed the rejections of Claims 1, 4, 6–8, 10, 21, 24, 26–28, 30, and 67–74 in light of Appellant’s arguments. We consider Appellant’s arguments as they are presented in the Appeal Brief, pages 6–32 and the Reply Br., pages 1–16. For the reasons that follow, we are not persuaded the Examiner has erred.

³ The present Application is being examined under the pre-AIA first to invent provisions. Final Act. 2.

Claims 1, 4, 6–8, 10, 21, 24, 26–28, 30, and 67–74:

Ineligible Subject Matter.

Appellant argues all claims in view of the limitations of claim 1. App. Br. 19. Therefore, we decide the appeal of the § 101 rejections with reference to claim 1 and refer to the rejected claims collectively herein as “the claims.” *See* 37 C.F.R. § 41.37(c)(1)(iv); *see also In re King*, 801 F.2d 1324, 1325 (Fed. Cir. 1986).

PRINCIPLES OF LAW

A. 35 U.S.C. § 101

An invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101.⁴ However, the Supreme Court has long interpreted 35 U.S.C. § 101 to include implicit exceptions: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 70 (2012) (citing *Diamond v. Diehr*, 450 U.S. 175, 185 (1981)).

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 Corp. v. CLS Bank Int’l*, 573 U.S. 208, 217–18 (2014) (citing *Mayo*, 566 U.S. at 75–77). In accordance with that framework, we

⁴ This threshold analysis of whether a claim is directed to one of the four statutory categories of invention, i.e., a process, machine, manufacture, or composition of matter, is referred to as “*Step I*” in the patent-eligibility inquiry under 35 U.S.C. § 101.

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; *see also 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” (*Diehr*, 450 U.S. at 191); “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 “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, 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.* at 191 (citing *Benson* and *Flook*), 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.”).

Abstract ideas may include, but are not limited to, fundamental economic practices, methods of organizing human activities, and mathematical formulas or relationships. *Alice*, 573 U.S. at 217–21. Under this guidance, we must therefore ensure at step one that we articulate what the claims are directed to with enough specificity to ensure the step one inquiry is meaningful. *Id.* at 217 (“[W]e tread carefully in construing this exclusionary principle lest it swallow all of patent law.”).

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.* (quoting *Mayo*, 566 U.S. at 77 (alteration in original)). “[M]erely requir[ing] generic computer implementation[] fail[s] to transform that abstract idea into a patent-eligible invention.” *Id.*

B. United States Patent and Trademark Office Revised Guidance⁵

The USPTO recently published revised guidance in the Federal Register concerning the application of § 101.

Under the Revised 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);⁶ and

(2) additional elements that integrate the judicial exception into a practical application (*see* Manual for Patent Examining Procedure (“MPEP”) §§ 2106.05(a)–(c), (e)–(h)).⁷

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 are 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.⁸

⁵ 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (January 7, 2019) (hereinafter “Revised Guidance,” or “Rev. Guid.”) (<https://www.govinfo.gov/content/pkg/FR-2019-01-07/pdf/2018-28282.pdf>).

⁶ Referred to as “*Revised Step 2A, Prong 1*” in the Revised Guidance (hereinafter “*Step 2A(i)*”).

⁷ Referred to as “*Revised Step 2A, Prong 2*” in the Revised Guidance (hereinafter “*Step 2A(ii)*”).

⁸ Items (3) and (4) continue to be collectively referred to as “*Step 2B*” of the Supreme Court’s two-step framework, described in *Mayo* and *Alice*.

See Revised Guidance.

Step 2A(i) — Abstract Idea

Informed by our judicial precedent, the Revised Guidance extracts and synthesizes key concepts identified by the courts as abstract ideas to explain that the abstract idea exception includes the following groupings of subject matter, when recited as such in a claim limitation:

(a) Mathematical concepts—mathematical relationships, mathematical formulas or equations, mathematical calculations;

(b) Certain methods of organizing human activity — fundamental economic principles or practices (including hedging, insurance, mitigating risk); commercial or legal interactions (including agreements in the form of contracts; legal obligations; advertising, marketing or sales activities or behaviors; business relations); managing personal behavior or relationships or interactions between people (including social activities, teaching, and following rules or instructions); and

(c) Mental processes—concepts performed in the human mind (including an observation, evaluation, judgment, opinion).

Under the Revised Guidance, if the claim does not recite a judicial exception (a law of nature, natural phenomenon, or subject matter within the enumerated groupings of abstract ideas above), then the claim is patent-eligible at *Step 2A(i)*. This determination concludes the eligibility analysis, except in rare situations identified in the Revised Guidance.⁹

⁹ In the rare circumstance in which an Examiner believes a claim limitation that does not fall within the enumerated groupings of abstract ideas should nonetheless be treated as reciting an abstract idea, the procedure described in of the Guidance for analyzing the claim should be followed. *See* Guidance, Section III.C.

However, if the claim recites a judicial exception (i.e., an abstract idea enumerated above, a law of nature, or a natural phenomenon), the claim requires further analysis for a practical application of the judicial exception in *Step 2A(ii)*.

Step 2A(ii) — Practical Application

If a claim recites a judicial exception in *Step 2A(i)*, we determine whether the recited judicial exception is integrated into a practical application of that exception in *Step 2A(ii)* by: (a) identifying whether there are any additional elements recited in the claim beyond the judicial exception(s); and (b) evaluating those additional elements individually and in combination to determine whether they integrate the exception into a practical application.

The seven identified “practical application” sections of the MPEP,¹⁰ cited in the Revised Guidance under *Step 2A(ii)*, are:

- (1) MPEP § 2106.05(a) Improvements to the Functioning of a Computer or To Any Other Technology or Technical Field
- (2) MPEP § 2106.05(b) Particular Machine
- (3) MPEP § 2106.05(c) Particular Transformation
- (4) MPEP § 2106.05(e) Other Meaningful Limitations
- (5) MPEP § 2106.05(f) Mere Instructions To Apply An Exception
- (6) MPEP § 2106.05(g) Insignificant Extra-Solution Activity

¹⁰ See MPEP §§ 2106.05(a)–(c), (e)–(h). Citations to the MPEP herein refer to revision [R-08.2017].

(7) MPEP § 2106.05(h) Field of Use and Technological Environment

If the recited judicial exception is integrated into a practical application as determined under one or more of the MPEP sections cited above, then the claim is not directed to the judicial exception, and the patent-eligibility inquiry ends. If not, then analysis proceeds to *Step 2B*.

Step 2B — “Inventive Concept” or “Significantly More”

Under our precedent, it is possible that a claim that does not “integrate” a recited judicial exception under *Step 2A(ii)* is nonetheless patent eligible. For example, the claim may recite additional elements that render the claim patent eligible even though a judicial exception is recited in a separate claim element.¹¹ The Federal Circuit has held claims eligible at the second step of the *Alice/Mayo* test (USPTO *Step 2B*) because the additional elements recited in the claims provided “significantly more” than the recited judicial exception (e.g., because the additional elements were unconventional in combination).¹² Therefore, if a claim has been determined to be directed to a judicial exception under *Revised Step 2A*, we must evaluate the additional elements individually and in combination under *Step 2B* to determine whether they provide an inventive concept (i.e., whether the additional elements amount to significantly more than the

¹¹ See, e.g., *Diehr*, 450 U.S. at 187.

¹² See, e.g., *Amdocs (Isr.) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1300, 1304 (Fed. Cir. 2016); *BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1349–52 (Fed. Cir. 2016); *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1257–59 (Fed. Cir. 2014).

exception itself).¹³

Under the Revised Guidance, we must consider in *Step 2B* whether an additional element or combination of elements: (1) “Adds a specific limitation or combination of limitations that are not well-understood, routine, conventional activity in the field, which is indicative that an inventive concept may be present;” or (2) “simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception, which is indicative that an inventive concept may not be present.” *See* Revised Guidance, III.B.¹⁴

In the *Step 2B* analysis, an additional element (or combination of

¹³ The patent eligibility inquiry may contain underlying issues of fact. *Mortg. Grader, Inc. v. First Choice Loan Servs. Inc.*, 811 F.3d 1314, 1325. (Fed. Cir. 2016). In particular, “[t]he question of whether a claim element or combination of elements is well-understood, routine and conventional to a skilled artisan in the relevant field is a question of fact.” *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1368 (Fed. Cir. 2018).

¹⁴ In accordance with existing *Step 2B* guidance, an Examiner’s finding that an additional element (or combination of elements) is well understood, routine, conventional activity must be supported with at least one of the four specific types of evidence required by the USPTO *Berkheimer* Memorandum, as shown above. For more information concerning evaluation of well-understood, routine, conventional activity, *see* MPEP § 2106.05(d), as modified by the USPTO *Berkheimer* Memorandum (USPTO Commissioner for Patents Memorandum dated Apr. 19, 2018, “Changes in Examination Procedure Pertaining to Subject Matter Eligibility, Recent Subject Matter Eligibility Decision (*Berkheimer v. HP, Inc.*)” (hereinafter “*Berkheimer Memo*”)); <https://www.uspto.gov/sites/default/files/documents/memo-berkheimer-20180419.PDF>.

elements) is not well-understood, routine or conventional unless the examiner finds an evidentiary basis, and expressly supports a rejection in writing with, one or more of the following:

1. A citation to an express statement in the specification or to a statement made by an applicant during prosecution that demonstrates the well-understood, routine, conventional nature of the additional element(s). . . .
2. A citation to one or more of the court decisions discussed in MPEP § 2106.05(d)(II) as noting the well-understood, routine, conventional nature of the additional element(s).
3. A citation to a publication that demonstrates the well-understood, routine, conventional nature of the additional element(s). . . .
4. A statement that the examiner is taking official notice of the well-understood, routine, conventional nature of the additional element(s).

See Berkheimer Memo.

The analysis in *Step 2B* further determines whether an additional element or combination of elements:

- (a) Adds a specific limitation or combination of limitations that are not well-understood, routine, conventional activity in the field, which is indicative that an inventive concept may be present; or
- (b) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception, which is indicative that an inventive concept may not be present.

Revised Guidance; *see Berkheimer Memo.*

If the Examiner or the Board determines under *Step 2B* that the

element (or combination of elements) amounts to significantly more than the exception itself, the claim is eligible, thereby concluding the eligibility analysis.

However, if a determination is made that the element and combination of elements does not amount to significantly more than the exception itself, the claim is ineligible under *Step 2B*, and the claim should be rejected for lack of subject matter eligibility.

ANALYSIS

Step 1

Claim 1 is a method (process) claim by reciting one of the enumerated categories of eligible subject matter in 35 U.S.C. § 101. Therefore, the issue before us is whether it is directed to a judicial exception without significantly more. Based upon our *de novo* review¹⁵ of the record in light of recent Revised Guidance with respect to patent-eligible subject matter rejections under 35 U.S.C. § 101, we affirm the rejection of claims 1, 4, 6–8, 10, 21, 24, 26–28, 30, and 67–74.

Step 2A(i): Does the Claim Recite a Judicial Exception?

The Examiner finds the claims are directed to the abstract idea of “using changes in information of a target’s close contacts to predict behaviors of the target.” Final Act. 2–3. The Examiner finds that the present abstract ideas are similar to those identified in *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366 (Fed. Cir. 2011) and *Intellectual*

¹⁵ “Whether a claim is drawn to patent-eligible subject matter is an issue of law that we review *de novo*.” *SiRF Tech., Inc. v. Int’l Trade Comm’n*, 601 F.3d 1319, 1331 (Fed. Cir. 2010).

Ventures I LLC v. Symantec Corp., 838 F.3d 1307 (Fed. Cir. 2016). *Id.* at 5.

Appellant contends, analogously to *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016), the claims provide “a specific implementation of a solution for problems related to identification of recruiting targets, so that the recruiters may not waste unnecessary recruiting resources on a disinterested recruiting target.” App. Br. 14 (emphasis omitted).

The preamble of claim 1 recites: “A method to provide a recruiting alert by an electronic recruiting alert system, the method comprising.” Table I compares the remaining limitations of claim 1 to the categories of abstract ideas set forth in the Revised Guidance.

Claim 1	Revised Guidance
[a] ¹⁶ providing, by the electronic recruiting alert system, a target registration user interface (UI), the target registration UI comprising:	An extra-solution activity data-gathering step. <i>See</i> Rev. Guid. 55, n. 31.
[b] at least one field to receive an identification of a recruiting target;	An extra-solution activity data-gathering step. <i>See</i> Rev. Guid. 55, n. 30.
[c] a plurality of fields to specify a set of contacts of the recruiting target to include in a custom set of monitored contacts, wherein the plurality of fields to specify the set of contacts includes fields comprising:	An extra-solution activity data-gathering step. <i>See</i> Rev. Guid. 55, n. 30.
[d] a field to specify monitoring of	An extra-solution activity step. <i>See</i> Rev. Guid. 55, n. 30.

¹⁶ Step designators, e.g., “[a],” were added to facilitate discussion.

<p>contacts that have social network profile data indicating employment by a same employer as the recruiting target, and that are also directly linked to the recruiting target in a social network graph;</p>	
<p>[e] a field to specify monitoring of contacts that have social network profile data indicating employment by the same employer as the recruiting target, and that are also indirectly linked to the recruiting target in the social network graph;</p>	<p>An extra-solution activity step. <i>See</i> Rev. Guid. 55, n. 30.</p>
<p>[f] a field to specify monitoring of contacts of the recruiting target that have a same job description as the recruiting target;</p>	<p>An extra-solution activity step. <i>See</i> Rev. Guid. 55, n. 30.</p>
<p>[g] a field to specify monitoring of contacts of the recruiting target that have recommended the recruiting target;</p>	<p>An extra-solution activity step. <i>See</i> Rev. Guid. 55, n. 30.</p>
<p>[h] a field to specify monitoring of contacts of the recruiting target that have one or more same group affiliations as the recruiting target; and</p>	<p>An extra-solution activity step. <i>See</i> Rev. Guid. 55, n. 30.</p>
<p>[i] a field to specify monitoring of contacts of the recruiting target that have exchanged one or more private messages with the recruiting target,</p>	<p>An extra-solution activity step. <i>See</i> Rev. Guid. 55, n. 30.</p>

<p>[j] wherein the target registration UI supports multiple different combinations of fields to specify the set of contacts of the recruiting target to include in the custom set of monitored contacts;</p>	<p>An extra-solution activity step. <i>See</i> Rev. Guid. 55, n. 30.</p>
<p>[k] a plurality of fields to receive custom monitoring data, wherein the plurality of fields to receive the custom monitoring data includes:</p>	<p>An extra-solution activity step. <i>See</i> Rev. Guid. 55, n. 30.</p>
<p>[l] at least one field to specify monitoring of social network profile addresses associated with contacts in the custom set of monitored contacts;</p>	<p>An extra-solution activity step. <i>See</i> Rev. Guid. 55, n. 30.</p>
<p>[m] at least one field to specify monitoring of a change of family status in social network profile data associated with the recruiting target; and</p>	<p>An extra-solution activity step. <i>See</i> Rev. Guid. 55, n. 30.</p>
<p>[n] at least one field to specify monitoring of a change of address in the social network profile data associated with the recruiting target,</p>	<p>An extra-solution activity step. <i>See</i> Rev. Guid. 55, n. 30.</p>
<p>[o] wherein the target registration UI supports multiple different combinations of the plurality of fields to receive the custom monitoring data;</p>	<p>An extra-solution activity step. <i>See</i> Rev. Guid. 55, n. 30.</p>
<p>[p] at least one field to receive a target classification component application program interface (API);</p>	<p>An extra-solution activity step. <i>See</i> Rev. Guid. 55, n. 30.</p>

and	
[q] a monitoring initiation control;	
[r] registering, by a target registration component at the electronic recruiting alert system and in response to activation of the monitoring initiation control, the recruiting target, wherein the recruiting target is identified via the target registration UI for monitoring according to the custom set of monitored contacts and the custom monitoring data received via the target registration UI;	Mental processes: concepts performed in the human mind. ¹⁷
[s] electronically monitoring, by a target monitoring component at the electronic recruiting alert system and in response to activation of the monitoring initiation control, social network profile data for occurrences of the custom monitoring data received via the target registration UI, including monitoring social network profile data associated with contacts in the custom set of	Mental processes: concepts performed in the human mind.

¹⁷ If a claim, under its broadest reasonable interpretation, covers performance in the mind but for the recitation of generic computer components, then it is still in the mental processes category unless the claim cannot practically be performed in the mind. *See Intellectual Ventures*, 838 F.3d at 1318 (“[W]ith the exception of generic computer-implemented steps, there is nothing in the claims themselves that foreclose them from being performed by a human, mentally or with pen and paper.”); Rev. Guid. 52 n.31.

<p>monitored contacts, wherein electronically monitoring the social network profile data comprises performing serial monitoring accesses to the social network profile data to detect whether the social network profile data specified in the custom monitoring data is present or changed;</p>	
<p>[t] automatically generating, by the electronic recruiting alert system, the recruiting alert in response to an event comprising presence or change of the social network profile data detected by the electronically monitoring the social network profile data for occurrences of the custom monitoring data, wherein the event includes at least a change in the social network profile data associated with one or more of the contacts in the custom set of monitored contacts, and wherein the recruiting alert identifies the recruiting target and data that triggered the recruiting alert;</p>	<p>Mental processes: concepts performed in the human mind.</p>
<p>[u] sending the recruiting alert to the target classification component API;</p>	<p>An extra-solution activity step. <i>See</i> Rev. Guid. 55, n. 30.</p>
<p>[v] receiving, by the electronic recruiting alert system from the recruiting target, a request for information for a recruiter corresponding to the detected event; and</p>	<p>An extra-solution activity step. <i>See</i> Rev. Guid. 55, n. 30.</p>

<p>[w] in response to one of the automatic generation of the recruiting alert and the request received from the recruiting target, reclassifying, by the electronic recruiting alert system, the recruiting target as an active recruiting target;</p>	<p>Mental processes: concepts performed in the human mind.</p>
<p>[x] transmitting, to a device of a third party recruiter via an API call or an electronic communication, information that corresponds to the reclassification of the recruiting target as the active recruiting target, wherein the active recruiting target indicates a level of recruiting activity that is higher than another level of recruiting activity and wherein the active recruiting target is contacted, by the third party recruiter, more than another recruiting target.</p>	<p>An extra-solution activity step. <i>See</i> Rev. Guid. 55, n. 30.</p>

Thus, under Step 2A(i), we find limitations [r], [s], [t], and [w] recite steps which may fit within the Revised Guidance category of “mental processes.” Limitations [b]–[n] relate to the genus of information about a candidate that is typically gathered by a recruiter and thus may also be analyzed in the category of certain methods of organizing human activity such as business, marketing activities. *See* Rev. Guid. 52.

Step 2A(ii) – Practical Application

Where, as here, we determine at Step 2A(i) the claims recite a judicial

exception, we look to determine the presence of additional elements that integrate the judicial exception into a practical application. The Revised Guidance is “designed to more accurately and consistently identify claims that recite a practical application of a judicial exception []and thus are not ‘directed to’ a judicial exception.” Rev. Guid. 53. The claims recite a practical application where an additional element reflects an improvement in the functioning of a computer, or an improvement to other technology or technical field.¹⁸ *Id.* at 55.

For the reasons which follow, we conclude that Appellant’s claims do not integrate the judicial exception into a practical application. *See* MPEP §§ 2106.05(a)–(c), (e)–(h). We address these “practical application” MPEP sections *seriatim*:

MPEP § 2106.05(a) “Improvements to the Functioning of a Computer or To Any Other Technology or Technical Field.”

“In determining patent eligibility, examiners should consider whether the claim ‘purport(s) to improve the functioning of the computer itself’ or ‘any other technology or technical field.’” MPEP § 2106.05(a).

Appellant contends: “[I]ndependent claim 1 provides a specific implementation of a solution for problems related to identification of recruiting targets, so that the recruiters may not waste unnecessary recruiting resources on a disinterested recruiting target.” App. Br. 14 (emphasis omitted) (citing Spec., ¶¶ 20–23). Appellant argues the Specification

¹⁸ The Revised Guidance also finds integration into a practical application where the judicial exception is used in medical treatment or to transform an article to a different state. Rev. Guid., 84 Fed. Reg. at 55. Such considerations are not before us.

describes a technical effect of the solution(s) provided by the recitations of the independent claim 1. *Id.* at 15 (quoting Spec., 21) (“[t]his disclosure appreciates that it may be difficult for the recruiter to know when recruiting targets should be classified as ‘passive’ or ‘active.’ Any number of criteria might be used to classify recruiting targets. In some cases, individuals may indicate in their social network profiles that they are open to contact about new opportunities and/or actively seeking a new position and this information may be used to classify recruiting targets.” (emphasis omitted)).

Our reading of the cited portion suggests Appellant discloses problems related to recruiting job candidates, i.e., activities the Revised Guidance classifies as “methods of organizing human activity,” specifically, “advertising, marketing or sales activities or behaviors; business relations[]; managing personal behavior or relationships or interactions between people.” Rev. Guid., 52. Nor are we persuaded the cited passages disclose a technological solution to the posited problems.

MPEP § 2106.05(b) Particular Machine.

At the outset, we note that the *Bilski* machine-or-transformation test is only applicable to the method (process) claims on appeal. This section of the MPEP guides: “When determining whether a claim recites significantly more than a judicial exception, examiners should consider whether the judicial exception is applied with, or by use of, a particular machine.” *See Bilski*, 561 U.S. at 604 (“[T]he machine-or-transformation test is a useful and important clue, an investigative tool” for determining whether a claim is patent eligible under § 101). MPEP § 2106.05(b).

MPEP § 2106.05(b) provides further guidance regarding what constitutes a particular machine:

[A]s described in MPEP § 2106.05(f), additional elements that invoke computers or other machinery merely as a tool to perform an existing process will generally not amount to significantly more than a judicial exception. *See, e.g., Versata Development Group v. SAP America*, 793 F.3d 1306, 1335 . . . (Fed. Cir. 2015) (explaining that in order for a machine to add significantly more, it must “play a significant part in permitting the claimed method to be performed, rather than function solely as an obvious mechanism for permitting a solution to be achieved more quickly”).

We find the claims on appeal are *silent* regarding specific limitations directed to an *improved* computer system, processor, memory, network, database, or Internet, nor does Appellant direct our attention to such specific limitations. Appellant merely discloses generic systems: “[e]xample computing devices may include a processor, a memory, and an electronic recruiting alert system, recruiter system, and/or other systems, applications and tools configured to carry out the methods described herein.” Spec., ¶ 14. “[T]he mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention.” *Alice*, 573 U.S. at 223; *see also Bascom*, 827 F.3d at 1348 (“An abstract idea on ‘an Internet computer network’ or on a generic computer is still an abstract idea.”). Applying this reasoning here, we conclude Appellant’s claims are not directed to a particular machine, but rather merely implement an abstract idea using generic computer components. Thus, we conclude Appellant’s method claims fail to satisfy the “tied to a particular machine” prong of the *Bilski* machine-or-transformation test. *Bilski*, 561 U.S. 593.

MPEP § 2106.05(c) Particular Transformation.

This section of the MPEP guides: “Another consideration when determining whether a claim recites significantly more is whether the claim effects a transformation or reduction of a particular article to a different state or thing.” “[T]ransformation and reduction of an article to a different state or thing is *the clue* to the patentability of a process claim that does not include particular machines.” *Bilski*, 561 U.S. at 658 (quoting *Benson*, 409 U.S. at 70).

The claims operate to select and analyze certain electronic data, i.e., “social network profile data.” *See Spec.*, ¶ 23. The selection of electronic data is not a “transformation or reduction of an *article* into a different state or thing constituting patent-eligible subject matter[.]” *See In re Bilski*, 545 F.3d 943, 962 (Fed. Cir. 2008) (emphasis added); *see also CyberSource*, 654 F.3d at 1375 (“The mere manipulation or reorganization of data . . . does not satisfy the transformation prong.”). Applying this guidance here, we conclude Appellant’s method claims fail to satisfy the transformation prong of the *Bilski* machine-or-transformation test.

MPEP § 2106.05(e) Other Meaningful Limitations.

This section of the MPEP guides:

Diamond v. Diehr provides an example of a claim that recited meaningful limitations beyond generally linking the use of the judicial exception to a particular technological environment. 450 U.S. 175 . . . (1981). In *Diehr*, the claim was directed to the use of the Arrhenius equation (an abstract idea or law of nature) in an automated process for operating a rubber-molding press. 450 U.S. at 177-78 The Court evaluated additional elements such as the steps of installing rubber in a press, closing the mold, constantly measuring the temperature in the

mold, and automatically opening the press at the proper time, and found them to be meaningful because they sufficiently limited the use of the mathematical equation to the practical application of molding rubber products. 450 U.S. at 184, 187 In contrast, the claims in *Alice Corp. v. CLS Bank International* did not meaningfully limit the abstract idea of mitigating settlement risk. 573 U.S. In particular, the Court concluded that the additional elements such as the data processing system and communications controllers recited in the system claims did not meaningfully limit the abstract idea because they merely linked the use of the abstract idea to a particular technological environment (i.e., “implementation via computers”) or were well-understood, routine, conventional activity.

MPEP § 2106.05(e).

“[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. Similarly, as for *Alice*, we find that “[t]aking the claim elements separately, the function performed by the computer at each step of the process is ‘[p]urely conventional.’” *Id.* “In short, each step does no more than require a generic computer to perform generic computer functions.” *Id.*

We find that Appellant’s claims do not add meaningful limitations beyond generally linking the use of the judicial exception to a particular technological environment.

MPEP § 2106.05(f) Mere Instructions To Apply An Exception.

Appellant does not persuasively argue that its claims do any more than to merely invoke generic computer components merely as a tool in which the computer instructions apply the judicial exception.

MPEP § 2106.05(g) Insignificant Extra-Solution Activity.

The claims operate to provide an indication of a “level of recruiting activity that is higher than another level of recruiting activity and wherein the active recruiting target is contacted, by the third party recruiter, more than another recruiting target.” We find generating and displaying information to be a classic example of insignificant extra-solution activity. *See, e.g., Bilski*, 545 F.3d at 963 (en banc), *aff’d sub nom, Bilski*, 561 U.S. 593.

MPEP § 2106.05(h) Field of Use and Technological Environment.

[T]he Supreme Court has stated that, even if a claim does not wholly pre-empt an abstract idea, it still will not be limited meaningfully if it contains only insignificant or token pre- or post-solution activity—such as identifying a relevant audience, a category of use, field of use, or technological environment.

Ultramercial, Inc. v. Hulu, LLC, 722 F.3d 1335, 1346 (Fed. Cir. 2013).

Claim 1 recites, *inter alia*, “electronically monitoring, by a target monitoring component at the electronic recruiting alert system and in response to activation of the monitoring initiation control, social network profile data,” a limitation we find is simply a field of use that attempts to limit the abstract idea to a particular technological environment.

We do not find Appellant’s argument to be persuasive because “[t]he courts have also identified examples in which a judicial exception has not been integrated into a practical application.” Rev. Guid., 84 Fed. Reg. at 55. The claims fail to recite a practical application where the additional element does no more than generally link the use of a judicial exception to a particular technological environment or field of use. *Id.* The mere application of an abstract idea in a particular field is not sufficient to integrate the judicial exception into a practical application. *See id.* at n.32.

In view of the foregoing, we conclude the claims are “directed to” a judicial exception.

1. Well-understood, routine, conventional.

Because the claims recite a judicial exception and do not integrate that exception into a practical application, we must then reach the issue of whether the claims adds a specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field. Rev. Guid., 84 Fed. Reg. at 56.

Appellant describes the claimed computer system consistent with its being “well-understood, routine, [and] conventional”:

[R]ecruiter 100 may comprise a human operator of a computing device, such as a general purpose laptop, desktop, mobile device and/or tablet device equipped with a browser to connect to a website supported by social network device 120.

Spec., ¶ 25.

[R]ecruiter 100, social network device 120, and participants 141-144 may be connected by via a network such as the Internet.

Spec., ¶ 26.

[A] social network device 120, arranged in accordance with at least some embodiments of the present disclosure. In a very basic configuration 201, computing device 200 may include one or more processors 210 and system memory 220. A memory bus 230 may be used for communicating between the processor 210 and the system memory 220.

Spec., ¶ 50.

[P]rocessor 210 may be of any type including but not limited to a microprocessor (μ P), a microcontroller (μ C), a digital signal processor (DSP), or any combination thereof.

Spec., ¶ 51. We find such “well-understood, routine, [and] conventional” limitations fail to indicate the presence of an inventive concept.

2. Specified at a high level of generality.

It is indicative of the absence of an inventive concept where the claims simply append well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception. Rev. Guid., 84 Fed. Reg. at 56.

The claims fail to recite any specific steps of an algorithm, nor does Appellant cite Specification disclosure for the required specificity.

We find the limitations are specified at such a high level of generality consistent with the absence of an inventive concept. Therefore, we conclude that none of the claim limitations, viewed “both individually and as an ordered combination,” amount to significantly more than the judicial exception in order to sufficiently transform the nature of the claims into patent-eligible subject matter. *See Alice*, 573 U.S. at 217 (internal quotations omitted) (quoting *Mayo*, 566 U.S. at 79).

In view of the foregoing, we sustain the rejection of claims 1, 4, 6–8, 10, 21, 24, 26–28, 30, and 67–74 under 35 U.S.C. § 101.

DECISION

The rejection of claims 1, 4, 6–8, 10, 21, 24, 26–28, 30, and 67–74 under 35 U.S.C. § 101 is AFFIRMED.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

CONCLUSION

In summary:

Claims Rejected	Basis	Affirmed	Reversed
1, 4, 6-8, 10, 21, 24, 26-28, 30, and 67-74	35 U.S.C. § 101	1, 4, 6-8, 10, 21, 24, 26-28, 30, and 67-74	

AFFIRMED