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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* DIANE C. SALMON, JAMES ALAN VONDERHEIDE, LAURA DIGIOACCHINO, EDWARD SCHEIDELMAN, and NANCY L. KIM

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Appeal 2018-005104  
Application 14/553,123  
Technology Center 3600

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Before JOHN A. EVANS, JASON J. CHUNG, and SCOTT E. BAIN,  
*Administrative Patent Judges.*

EVANS, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellant<sup>1</sup> seeks our review under 35 U.S.C. § 134(a) of the Examiner’s final rejection of Claims 1–5, 9–11, and 15–20, all pending claims. Appeal Br. 5. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.<sup>2</sup>

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<sup>1</sup> We use the word “Appellant” to refer to “Applicant” as defined in 37 C.F.R. § 1.42. Appellant states the real party in interest is Visa International Service Association. Appeal Br. 3.

<sup>2</sup> Rather than reiterate the arguments of Appellant and the Examiner, we refer to the Appeal Brief (filed January 10, 2018, “Appeal Br.”), the Reply

## STATEMENT OF THE CASE

The claims relate to a method of determining an emotional state of a person. *See* Abstract.

### *Invention*

Claims 1, 11, and 16 are independent. App. Br. 5. An understanding of the invention can be derived from a reading of Claim 1, which is reproduced in Table 1.

### *Rejections<sup>3</sup>*

Claims 1–5, 9–11, and 15–20 stand rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more. Final Act. 2–16.

### *Allowable Subject Matter*

The Examiner finds Claims 1–5, 9–11, and 15–20 are free of the prior art and would be allowable if rewritten or amended to overcome the rejection under 35 U.S.C. § 101. Final Act. 8.

## ANALYSIS

We have reviewed the rejections of Claims 1–5, 9–11, and 15–20 in light of Appellant’s arguments that the Examiner erred. We have considered

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Brief (filed April 18, 2018, Reply Br.”), the Examiner’s Answer (mailed February 21, 2018, “Ans.”), the Final Action (mailed June 7, 2017, “Final Act.”), and the Specification (filed March 1, 2017, “Spec.”) for their respective details.

<sup>3</sup> The present application was examined under the first inventor to file provisions of the AIA. Final Act. 2.

in this Decision only those arguments Appellant actually raised in the Brief. Any other arguments which Appellant could have made but chose not to make in the Brief are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv). We provide the following explanation to highlight and address specific arguments and findings primarily for emphasis. We consider Appellant's arguments as they are presented in the Appeal Brief, pages 12–25 and the Reply Brief, pages 2–5.

CLAIMS 1–5, 9–11, AND 15–20: INELIGIBLE SUBJECT MATTER

Appellant designates Claim 1 as representative. Appeal Br. 7. Therefore, we decide the appeal of the § 101 rejection on the basis of representative Claim 1 and refer to the rejected claims collectively herein as “the claims.” *See* 37 C.F.R. § 41.37(c)(1)(iv); *In re King*, 801 F.2d 1324, 1325 (Fed. Cir. 1986).

*The Rejection and Appellant's Contentions*

The Examiner finds the claims are directed to the abstract idea of retrieving from an authorization response a conversion rate between a loyalty currency and a payment currency, and applying at least a portion of the balance of the loyalty currency towards the payment transaction based on the conversion rate. Final Act 3. The Examiner further finds the claims do not include additional elements that are sufficient to amount to significantly more than the judicial exception because the additional computer elements, which are recited at a high level of generality, provide conventional

computer functions that do not add meaningful limits to practicing the abstract idea. *Id.*

Appellant contends the claims are “directed to technological improvements in the specific field of electronic loyalty reward systems.” Appeal Br. 12 (citing Spec. ¶ 17). Appellant argues “the problems solved by the claimed invention are specific to electronic loyalty rewards systems and, for that reason alone, are not directed to an ‘abstract idea’ under the first prong of *Alice*.” Appeal Br. 13 citing *DDR Holdings, LLC v. Hotels.com, LP*, 773 F. 3d 1245, 1258 (Fed. Cir. 2014)). Appellant further argues the “technological advantages of the invention are a result of the particular arrangement of components and actions recited in the claims.” *Id.* 13 (citing *Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F. 3d 1288, 1301 (Fed. Cir. 2016) (finding eligibility under the first prong for a claim that “purposefully arranges the components in a distributed architecture to achieve a technological solution to a technological problem”).

We reviewed the record *de novo*. *SiRF Tech., Inc. v. Int’l Trade Comm’n*, 601 F.3d 1319, 1331 (Fed. Cir. 2010) (“Whether a claim is drawn to patent-eligible subject matter is an issue of law that we review *de novo*.”); *Accenture Global Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1340–41 (Fed. Cir. 2013); *Dealertrack, Inc. v. Huber*, 674 F.3d 1315, 1333 (Fed. Cir. 2012); *In re Bilski*, 545 F.3d 943, 951 (Fed. Cir. 2008) (en banc), *aff’d*, 130 S. Ct. 3218 (2010). However, that legal conclusion “may contain underlying factual issues.” *Accenture*, 728 F.3d at 1341. Based upon our review of the record in light of recent policy guidance with respect to patent-

eligible subject matter rejection under 35 U.S.C. § 101,<sup>4</sup> we affirm the rejection of Claims 1–5, 9–11, and 15–20 for the specific reasons discussed below.

*35 U.S.C. § 101*

Section 101 provides that a patent may be obtained for “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.” 35 U.S.C. § 101. The Supreme Court has long recognized, however, that § 101 implicitly excludes “[l]aws of nature, natural phenomena, and abstract ideas” from the realm of patent-eligible subject matter, as monopolization of these “basic tools of scientific and technological work” would stifle the very innovation that the patent system aims to promote. *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014) (quoting *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)); *see also Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 72–78 (2012); *Diamond v. Diehr*, 450 U.S. 175, 185 (1981).

Under the mandatory Revised Guidance, we reconsider whether Appellant’s claims recite:

1. any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human interactions such as a fundamental economic practice, or mental processes), and
2. additional elements that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h)).

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<sup>4</sup> *See* 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Revised Guidance”).

- Only if a claim, (1) recites a judicial exception, and (2) does not integrate that exception into a practical application, do we then reach the issue of 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.

A. Whether the claims recite a judicial exception

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(s) (that is, when recited on their own or *per se*): (a) mathematical concepts,<sup>5</sup> i.e., mathematical relationships, mathematical formulas, equations,<sup>6</sup> and mathematical calculations<sup>7</sup>; (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

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<sup>5</sup> *Bilski v. Kappos*, 561 U.S. 593, 611 (2010) (“The concept of hedging . . . reduced to a mathematical formula . . . is an unpatentable abstract idea.”).

<sup>6</sup> *Diehr*, 450 U.S. at 191 (“A mathematical formula as such is not accorded the protection of our patent laws”); *Parker v. Flook*, 437 U.S. 584, 594 (1978) (“[T]he discovery of [a mathematical formula] cannot support a patent unless there is some other inventive concept in its application.”).

<sup>7</sup> *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1163 (Fed. Cir. 2018) (holding that claim to a “series of mathematical calculations based on selected information” are directed to abstract ideas).

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)<sup>8</sup>; and (c) mental processes—concepts performed in the human mind (including observation, evaluation, judgment, opinion).<sup>9</sup>

The preamble of independent Claim 1 recites: “A method, comprising.” The limitations recited in the body of the claim are analyzed in Table I against the categories of abstract ideas as set forth in the Revised Guidance.

<b>Claim 1</b>	<b>Revised Guidance, p. 52</b>
[a] <sup>10</sup> providing a computing apparatus comprising:	Insignificant extra-solution activity.
[b] a transaction handler configured to communicate with separate	Certain methods of organizing human activity. <sup>11</sup>

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<sup>8</sup> *Alice*, 573 U.S. at 219–20 (concluding that use of a third party to mediate settlement risk is a “fundamental economic practice” and thus an abstract idea); *see* Revised Guidance, at 52 n.13 for a more extensive listing of “[c]ertain methods of organizing human activity” that have been found to be abstract ideas.

<sup>9</sup> *Mayo*, 566 U.S. at 71 (“[M]ental processes[ ] and abstract intellectual concepts are not patentable, as they are the basic tools of scientific and technological work” (quoting *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972))).

<sup>10</sup> Step designators, e.g., “[a],” were added to facilitate discussion.

<sup>11</sup> *Inventor Holdings, LLC v. Bed Bath & Beyond, Inc.*, 876 F.3d 1372, 1378–79 (Fed. Cir. 2017) (holding that concept of “local processing of payments for remotely purchased goods” is a “fundamental economic practice, which *Alice* made clear is, without more, outside the patent system.”); *In re Ferguson*, 558 F.3d 1359, 1364 (Fed Cir. 2009) (holding

computers on an electronic payment processing network according to a predetermined communication protocol for authorization of transactions of payments made in the electronic payment processing network, the separate computers including:	
[c] first computers controlling payment accounts from which the payments are made using a financial currency;	Certain methods of organizing human activity.
[d] second computers controlling reward accounts hosting loyalty currencies; and	Certain methods of organizing human activity.
[e] transaction terminals on which the transactions of the payments are initiated;	Certain methods of organizing human activity.
[f] receiving, in the transaction handler of the computing apparatus configured on the electronic payment processing network, an authorization request initiated on a transaction terminal for a payment transaction in a payment account identified in the authorization request and controlled by one of the first computers;	Insignificant extra-solution activity, e.g., mere data-gathering. Rev. Guid. 55 n.31.
[g] in response to the authorization request received in the transaction handler, identifying, by the	Mental processes, i.e., concepts performed in the human mind

methods “directed to organizing business or legal relationships in the structuring of a sales force (or marketing company)” to be ineligible).

<p>computing apparatus configured on the electronic payment processing network, a sponsor processor in the second computers, the sponsor processor controlling a loyalty program associated with the payment account controlled by the one of the first computers;</p>	<p>(including an observation, evaluation, judgment, opinion).</p>
<p>[h] transmitting, by the transaction handler of the computing apparatus using the predetermined communication protocol for the authorization of transactions in the electronic payment processing network, an authorization request to the sponsor processor to request authorization of redemption of loyalty currency from the loyalty program associated with the payment account;</p>	<p>Insignificant extra-solution activity, e.g., mere data-gathering. Rev Guid. 55 n.31.</p>
<p>[i] receiving, by the transaction handler of the computing apparatus configured on the electronic payment processing network, an authorization response from the sponsor processor responsive to the authorization request transmitted, using the predetermined communication protocol for the authorization of transactions in the electronic payment processing network, to the sponsor processor;</p>	<p>Insignificant extra-solution activity, e.g., mere data-gathering. Rev. Guid. 55 n.31.</p>
<p>[j] before the transaction handler transmits an authorization response to the transaction terminal</p>	<p>Insignificant extra-solution activity, e.g., mere data-gathering. Rev. Guid. 55 n.31.</p>

<p>responsive to the authorization request initiated from the transaction terminal, retrieving, by the computing apparatus configured on the electronic payment processing network, from the authorization response received in the transaction handler a balance of loyalty currency available from the loyalty program associated with the payment account for application to the payment transaction, and</p>	
<p>[k] retrieving, by the computing apparatus from the authorization response received in the transaction handler, a conversion rate between the loyalty currency and a currency of the payment account; and</p>	<p>Insignificant extra-solution activity, e.g., mere data-gathering. Rev. Guid. 55 n.31.</p>
<p>[l] applying, by the computing apparatus configured on the electronic payment processing network, at least a portion of the balance of loyalty currency towards the payment transaction based on the conversion rate, during authorization of the payment transaction in the payment account.</p>	<p>Mental processes, i.e., concepts performed in the human mind.</p>

In view of Table I, we find limitations [b]–[e], [g], and [l] of independent Claim 1 recite abstract ideas. Thus, Claim 1 recites a judicial exception, *per se*.

*Step 2A(ii): Judicial Exception Integrated into a Practical Application?*

If the claims recite a patent-ineligible concept, as we conclude above, we proceed to the “practical application” *Step 2A(ii)* wherein we determine whether the recited judicial exception is integrated into a practical application of that exception 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.

For the reasons which follow, we conclude that Appellant’s claims do not integrate the judicial exception into a practical application.

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).

With respect to technological improvements, Appellant contends “the claims are directed to technological improvements in the specific field of electronic loyalty reward systems.” Appeal Br. 12 (citing Spec. ¶ 17) (explaining that the claimed invention improves “the overall system performances, including interoperability, transaction integrity, efficiency in processing payments in combination with offers, time delay in processing, resource allocation, etc.”).

“Notwithstanding the prolixity of the claims, they recite a very simple invention: a computer-driven method and computer program for converting

one vendor’s loyalty award credits.” *Loyalty Conversion Systems Corp. v. American Airlines*, 66 F. Supp. 3d 829, 835 (E.D. Tex. Sept. 3, 2014) (Federal Circuit Judge William C. Bryson sitting by designation) (“In principle, the invention is thus the equivalent of a currency exchange as applied to loyalty award credits such as airline frequent flyer miles or hotel loyalty award points. The Court concludes that the invention claimed in the ’023 and ’550 patents is not fundamentally different from the kinds of commonplace financial transactions that were the subjects of the Supreme Court’s recent decisions in *Bilski v. Kappos*, 561 U.S. 593 (2010), and *Alice*, 573 U.S. 208 (2014)).” Thus, contrary to Appellant’s contention, we find “electronic loyalty reward systems” is not a technological field. *See Mortg. Grader, Inc. v. First Choice Loan Servs. Inc.*, 811 F.3d 1314, 1324–25 (Fed. Cir. 2016) (generic computer components, such as an “interface,” “network,” and “database,” fail to satisfy the inventive concept requirement); *Alice*, 573 U.S. at 226 (“Nearly every computer will include a ‘communications controller’ and a ‘data storage unit’ capable of performing the basic calculation, storage, and transmission functions required by the method claims.”).

MPEP § 2106.05(b) Particular Machine.

The *Bilski* machine-or-transformation test is only applicable to method (process) claims on appeal in the present application. Appellant discloses generic computer devices:

“[t]hus, a conventional transaction terminal and/or a conventional acquirer processor can be used in the system configured to apply the benefit of an offer during the processing

of a transaction initiated and completed at the transaction terminal”).

Spec. ¶ 46.

In one embodiment, the transaction terminal (105) is a POS terminal at a traditional, offline, “brick and mortar” retail store. In another embodiment, the transaction terminal (105) is an on line server that receives account information.

Spec. ¶ 463.

In one embodiment, the transaction handler (103), the issuer processor (145), the acquirer processor (147), the transaction terminal (105), the portal (143), and other devices and/or services accessing the portal (143) are connected via communications networks, such as local area networks, cellular telecommunications networks, wireless wide area networks, wireless local area networks, an intranet, and Internet.

Spec. ¶ 466. Nor do we find disclosure of anything other than generic computer hardware or software.

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 select and analyze certain electronic data. 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 Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1375 (Fed. Cir. 2011) (“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 in *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 their 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 acquire and display data, which are classic examples 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). We find the claims attempt to limit the abstract idea to a particular technological

environment “electronic loyalty reward systems.” Appeal Br. 12. We do not find Appellant’s arguments to be persuasive because “[t]he courts have also identified examples in which a judicial exception has not been integrated into a practical application.” Revised Guidance, 84 Fed. Reg. at 55. The claims fail to recite a practical application where the additional element does 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 55 n.32. In view of the foregoing, we conclude the claims are “directed to” a judicial exception.

3. 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 claim adds a specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field. Revised Guidance, 84 Fed. Reg. at 56.

The written description describes the claimed computer system consistent with its being “well-understood, routine, [and] conventional.” *See* Section “MPEP § 2106.05(b) Particular Machine,” above for Appellant’s disclosure of conventional computational hardware.

4. 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. Revised Guidance, 84 Fed. Reg. at 56.

The claims fail to recite any specific steps of an algorithm, nor does Appellant cite any 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. Considering the claim limitations as an ordered combination adds nothing to the abstract idea that is not already present when the limitations are considered separately. *See Mayo*, 566 U.S. at 79. The ordered combination of limitations amounts to nothing more than certain mental processes implemented with generic computer components that operate “in a conventional way.” *See also Alice*, 573 U.S. at 225–26. 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 1–20 under 35 U.S.C. § 101.

#### CONCLUSION

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1–5, 9–11, 15–20	101	Eligibility	1–5, 9–11, 15–20	

Appeal 2018-005104  
Application 14/553,123

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). *See* 37 C.F.R. § 41.50(f).

AFFIRMED