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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 AYMAN HAMMAD
_____

Appeal 2018-005390
Application 12/431,489
Technology Center 3600
_____

Before MICHAEL W. KIM, MURRIEL E. CRAWFORD, and JOSEPH A. FISCHETTI, and, *Administrative Patent Judges*.

FISCHETTI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant[1] seeks our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 13, 14, 16, 17, 27–29, and 31. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF DECISION

We AFFIRM.

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[1] We use the word "Appellant" to refer to "applicant" as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as Visa U.S.A. Inc. Appeal Br. 2.

THE INVENTION

Appellant states the application describes a "consumer device." Spec. ¶ 6.

Claim 13, reproduced below, is representative of the subject matter on appeal.

> 13.   A method comprising:
> receiving, by an access device, a first account identifier associated with a first account, a second account identifier associated with a second account, and an alterable flag from a portable consumer device, wherein the alterable flag links the first account and the second account, and wherein a state of the alterable flag indicates whether value is to be automatically transferred from the second account to the first account;
> generating, by the access device, a first authorization request message associated with a purchase transaction, wherein the first authorization request message includes the first account identifier associated with the first account, the second account identifier associated with the second account, a transaction amount, and the alterable flag stored in the portable consumer device;
> sending, by the access device to a server computer, the first authorization request message, wherein the server computer thereafter:
> analyzes the first authorization request message,
> determines that the first account does not contain sufficient funds to pay for the transaction amount for the purchase transaction,
> determines the state of the alterable flag, and
> performs additional processing depending upon the state of the alterable flag, wherein, if the alterable flag is in a transfer state, the additional processing includes initiating a transfer of value from the second account to the first account by transmitting a request to an issuer of the second account, and

transmitting a second authorization request message associated with the purchase transaction for the transaction amount to an issuer of the first account; and
receiving an authorization response message from the server computer.

THE REJECTION

The following rejection is before us for review.

Claims 13, 14, 16, 17, 27–29, and 31 are rejected under 35 U.S.C. § 101 because the claimed invention is directed to a judicial exception.

FINDINGS OF FACT

We adopt the Examiner's findings as set forth on pages 6–7 in the Final Office Action[2] and on pages 3–9 in the Examiner's Answer[3].

ANALYSIS
35 U.S.C. § 101 REJECTION

We affirm the rejection of claims 13, 14, 16, 17, 27–29, and 31 under 35 U.S.C. § 101.

The Appellant argues claims 13, 14, 16, 17, 27–29, and 31 as a group. (Appeal Br. 7–21). We select claim 13 as the representative claim for this group, and so the remaining claims stand or fall with claim 13. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2015).

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[2] All references to the Final Office Action refer to the Final Office Action mailed on August 11, 2017.
[3] All references to the Examiner's Answer refer to the Examiner's Answer mailed on March 1, 2018.

An invention is patent-eligible if it claims a "new and useful process, machine, manufacture, or composition of matter." 35 U.S.C. § 101. However, the Supreme Court has long interpreted 35 U.S.C. § 101 to include implicit exceptions: "[l]aws of nature, natural phenomena, and abstract ideas" are not patentable. *E.g.*, *Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208, 216 (2014).

In determining whether a claim falls within an excluded category, we are guided by the Supreme Court's two-step framework, described in *Mayo* and *Alice*. *Alice*, 573 U.S. at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–77 (2012)). In accordance with that framework, we first determine what concept the claim is "directed to." *See id.* at 219 ("On their face, the claims before us are drawn to the concept of intermediated settlement, *i.e.,* the use of a third party to mitigate settlement risk."); *see also Bilski v. Kappos*, 561 U.S. 593, 611 (2010) ("Claims 1 and 4 in petitioners' application explain the basic concept of hedging, or protecting against risk.").

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

252, 267–68 (1854))); and manufacturing flour (*Benson*, 409 U.S. at 69 (citing *Cochrane v. Deener*, 94 U.S. 780, 785 (1876))).

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

If the claim is "directed to" an abstract idea, we turn to the second step of the *Alice* and *Mayo* framework, where "we must examine the elements of the claim to determine whether it contains an 'inventive concept' sufficient to 'transform' the claimed abstract idea into a patent-eligible application." *Alice*, 573 U.S. at 221 (internal quotation marks omitted). "A claim that recites an abstract idea must include 'additional features' to ensure 'that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].'" *Id.* (alterations in original) (quoting *Mayo*, 566 U.S. at 77). "[M]erely requir[ing] generic computer implementation[] fail[s] to transform that abstract idea into a patent-eligible invention." *Id.*

The PTO published revised guidance on the application of § 101. 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) ("Guidance"). Under the Guidance, we first look to whether the claim recites:

(1) any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human activity such as a fundamental economic practice, or mental processes); and

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

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, do we then look to whether the claim:

(3) adds a specific limitation beyond the judicial exception that is not "well-understood, routine, conventional" in the field (*see* MPEP § 2106.05(d)); or

(4) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.

See Guidance.

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

In so doing, as indicated above, we apply a "directed to" two prong test: 1) evaluate whether the claim recites a judicial exception, and 2) if the claim recites a judicial exception, evaluate whether the claim "appl[ies], rel[ies] on, or use[s] the judicial exception in a manner that imposes a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception." Guidance at 53; *see also* MPEP §§ 2106.05(a)–(c), (e)–(h).

The Specification states:

> There are a number of payment card programs that are used to control spending by teens[.] One such program is entitled Visa Buxx®. This program uses a prepaid, reloadable card that is created for teens. In the program, a parent enrolls their teen, then loads money onto the prepaid card. Parents retain complete control of the account associated with the prepaid card and can view the teen's spending history at any time using a website. The website can be used to enroll teens, replenish value, check balances and transactions, view special offers and access money management tools. It offers several options to fund the prepaid card including credit cards and debit cards. A value reload feature on the website enables cardholders and/or parents to set their own loading and reloading schedule (with a valid funding account on file). Value reload options include immediate one-time, scheduled one-time, recurring scheduled and low balance.

Spec. ¶ 2.

The Specification goes on to state:

> Although the above-described program is useful, it could be improved. For example, the consumer may want to perform an off-line transaction. If the balance on the prepaid card is too low to conduct a purchase transaction for a particular item, the consumer may not be able to make the purchase. Further, in the

above-described system, it is necessary for a parent to log onto a website to change the reload parameters associated with the reloadable card.

Spec. ¶ 3.

Understood in light of the Specification, claim 13, recites, in pertinent part, the concepts of:

> receiving, . . . a first account identifier associated with a first account, a second account identifier associated with a second account, and an alterable flag . . ., wherein the alterable flag links the first account and the second account, and wherein a state of the alterable flag indicates whether value is to be automatically transferred from the second account to the first account;
>
> generating, . . . a first authorization request message associated with a purchase transaction, wherein the first authorization request message includes the first account identifier associated with the first account, the second account identifier associated with the second account, a transaction amount, . . .;
>
> sending, . . . the first authorization request message, wherein . . . thereafter:
>
> analyz[ing] the first authorization request message,
>
> determin[ing] that the first account does not contain sufficient funds to pay for the transaction amount for the purchase transaction,
>
> determin[ing] the state of the alterable flag, and
>
> perform[ing] additional processing depending upon the state of the alterable flag, wherein, if the alterable flag is in a transfer state, the additional processing includes initiating a transfer of value from the second account to the first account by transmitting a request to an issuer of the second account, and transmitting a second authorization request message associated with the purchase transaction for the transaction amount to an issuer of the first account; and
>
> receiving an authorization response message.

Accordingly, the Examiner found that the claims are directed to plural judicial exceptions, finding:

> Claim(s) **13–14, 16–17, 27–29, and 31** are directed to **a series of steps instructing how to link a first account with a second account using an alterable flag (including: . . . receiving . . . a first account identifier . . . , . . . generating . . . a first authentication request message . . . , . . . sending . . . the first authorization request message . . . , . . . analyzes the first authorization request message . . . , . . . determines that the first account does not contain sufficient funds to pay for the transaction amount . . . , . . . determines the state of the alterable flag . . . , . . . transmitting a second authorization request message . . . , . . . receiving an authorization response request message . . . , and . . . stores a balance . . .),** which is a fundamental economic practice, as well as a method of organizing human activities, and thus an abstract idea. Additionally, the claims are similar to the following concepts/cases that the courts have recognized to be abstract ideas: **collecting information, analyzing it, and displaying certain results of the collection and analysis (Electric Power Group), creating a contractual relationship (buySAFE), collecting and comparing known information (Classen), obtaining and comparing intangible data (Cybersource), data recognition and storage (Content Extraction), organizing information through mathematical correlations (Digitech), and processing information through a clearinghouse (Dealertrack).** [4]

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[4] In our analysis to follow, we will address the first two "directed to" findings made by the Examiner for the sake of brevity. That the Examiner made plural findings as to what the claims are directed to is not in error. *See Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1240 (Fed. Cir. 2016) ("An abstract idea can generally be described at different levels of abstraction." *Cf.* Appeal Br. 8; *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016); *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350 (Fed. Cir. 2014); *Classen Immunotherapies, Inc. v. Biogen IDEC*, 659 F.3d 1057 (Fed. Cir. 2011); *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366 (Fed. Cir. 2011); *Content Extraction & Transmission LLC v. Wells Farbo*

Final Act. 6–7.

We agree with the Examiner that claim 13 recites a fundamental economic practice because claim 13 recites such elements, e.g., "determin[ing] that the first account does not contain sufficient funds to pay for the transaction amount for the purchase transaction," and "transmitting a second authorization request message associated with the purchase transaction for the transaction amount to an issuer of the first account." These elements recite the idea of ensuring adequate funds are provided to cover the cost of a transaction which is a fundamental economic practice. The patent-ineligible end of the spectrum includes fundamental economic practices. *Alice*, 573 U.S. at 220. Fundamental economic practices are considered certain methods of organizing human activity, which is an enumerated abstract idea. Guidance, 84 Fed. Reg. 52.

We also agree with the Examiner that limitations of claim 13 are similar to those recited in *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016) in that the claims are similar to "collecting information, analyzing it, and displaying certain results of the collection and analysis." Final Act. 6. For example, claim 13 recites in pertinent part, "analyz[ing] the first authorization request message, determin[ing] that the first account does not contain sufficient funds to pay for the transaction amount for the purchase transaction, determin[ing] the state of the alterable flag, and perform[ing] additional processing depending upon the state of the alterable flag." These are concepts capable of being performed practically in

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Bank, Nat'l Ass'n, 776 F.3d 1343 (Fed. Cir. 2014); *Digitech Image Techs., LLC v. Elecs. for Imaging, Inc.*, 758 F.3d 1344 (Fed. Cir. 2014); *Dealertrack, Inc. v. Huber*, 674 F.3d 1315 (Fed. Cir. 2012).

the human mind as mental processes, because the steps of receiving, transmitting, storing, and analyzing data mimic the human thought processes of observation, evaluation, judgment, and opinion, perhaps with paper and pencil, where the data interpretation is capable of being practically performed in the human mind. *See In re TLI Commc'ns LLC Patent Litig.*, 823 F.3d 607, 611 (Fed. Cir. 2016); *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093–94 (Fed. Cir. 2016).

Turning to the second prong of the "directed to" test, claim 13 only generically requires "an access device," "a portable consumer device," and "a server computer." These components are described in the Specification at a high level of generality. *See* Spec. ¶¶ 25, 26, 30, 35, 36 and Figs.1 and 2. We fail to see how the generic recitations of these most basic computer components and/or of a system so integrates the judicial exception as to "impose[] a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception." Guidance, 84 Fed. Reg. 53. We also find no indication in the Specification that the claimed invention effects a transformation or reduction of a particular article to a different state or thing.

Thus, we find that the claims recite fundamental economic practices and mental processes that are not integrated into a practical application.

That the claims do not preempt all forms of the abstraction or may be limited to account balances, does not make them any less abstract. *See OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015) ("And that the claims do not preempt all price optimization or may be limited to price optimization in the e-commerce setting do not make them any less abstract.").

Turning to the second step of the *Alice* analysis, because we find that the claims are directed to abstract ideas/judicial exceptions, the claims must include an "inventive concept" in order to be patent-eligible, i.e., there must be an element or combination of elements sufficient to ensure that the claim in practice amounts to significantly more than the abstract idea itself. *See Alice*, 573 U.S. at 217–18 (quoting *Mayo*, 566 U.S. at 72–73).

Concerning this step the Examiner found the following:

> As such, the claims, when considered individually and in combination, are nothing more than the instruction to implement the abstract idea (i.e. **linking a first account with a second account using an alterable flag)** in a particular, albeit well-understood, routine and conventional technological environment. **The additional limitations are merely performing repetitive calculations; receiving, processing, and storing data; electronic recordkeeping; automating mental tasks; and receiving or transmitting data over a network, all of which have been held by the courts to be well understood, routine, and conventional computer functions.** The additional limitations of the independent and dependent claim(s) when considered individually and as an ordered combination do not amount to significantly more than the abstract idea.

Final Act. 3–4.

We agree with the Examiner. "[T]he relevant question is whether the claims here do more than simply instruct the practitioner to implement the abstract idea . . . on a generic computer." *Alice*, 573 U.S. at 225. They do not.

Taking the claim elements separately, the function performed by the computer at each step of the process is purely conventional. Using a computer to receive, generate, send, analyze, determine, and apply decision criteria to data as a result, amounts to electronic data query and retrieval—

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some of the most basic functions of a computer. All of these computer functions are well-understood, routine, conventional activities previously known to the industry. *See Elec. Power Grp.*, 830 F.3d at 1354; *see also In re Katz Interactive Call Processing Patent Litig.*, 639 F.3d 1303, 1316 (Fed. Cir. 2011) ("Absent a possible narrower construction of the terms 'processing,' 'receiving,' and 'storing,' . . . those functions can be achieved by any general purpose computer without special programming."). In short, each step does no more than require a generic computer to perform generic computer functions. The claims do not, for example, purport to improve the functioning of the computer itself. In addition, as we stated above, the claims do not affect an improvement in any other technology or technical field. The Specification spells out different generic equipment and parameters that might be applied using this concept and the particular steps such conventional processing would entail based on the concept of information access under different scenarios (*see, e.g.*, Spec. ¶¶ 25, 26, 30, 35, 36 and Figs.1 and 2). Thus, the claims at issue amount to nothing significantly more than instructions to apply the abstract ideas using some unspecified, generic computer. Under our precedents, that is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 573 U.S. at 225–26.

Considered as an ordered combination, the computer components of Appellant's claims add nothing that is not already present when the steps are considered separately. The sequence of data reception-analysis (receive, generate, send, analyze, determine, and apply decision criteria to data as a result) and storing is equally generic and conventional or otherwise held to be abstract. *See Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed.

Cir. 2014) (sequence of receiving, selecting, offering for exchange, display, allowing access, and receiving payment recited an abstraction), *Inventor Holdings, LLC v. Bed Bath & Beyond, Inc.*, 876 F.3d 1372, 1378 (Fed. Cir. 2017) (holding that sequence of data retrieval, analysis, modification, generation, display, and transmission was abstract), *Two-Way Media Ltd. v. Comcast Cable Commc'ns, LLC*, 874 F.3d 1329, 1339 (Fed. Cir. 2017) (holding sequence of processing, routing, controlling, and monitoring was abstract). The ordering of the steps is, therefore, ordinary and conventional.

We have reviewed all the arguments Appellant has submitted concerning the patent eligibility of the claims before us that stand rejected under 35 U.S.C. § 101. Appeal Br. 7–21; Reply Br. 2–8. We find that our analysis above substantially covers the substance of all the arguments, which have been made. But, for purposes of completeness, we will address various arguments in order to make individual rebuttals of same.

> Appellant argues:

> Notwithstanding the above, the Examiner has also failed to establish a *prima facie* case of patent ineligibility, because the Examiner has failed to establish that any of the alleged abstract ideas (A), (B), or (C) are similar to a concept that the courts have identified as an abstract idea. In particular, the Examiner fails to explain "why" the cases are "similar to at least one concept that the courts have identified as an abstract idea."

Appeal Br. 9.

We disagree with Appellant. First, any alleged differences between what the Examiner describes as constituting "abstract ideas" and cited case law does not constitute error, because the characteristics of abstract ideas can be described, at different levels of abstraction, to what the claims are

directed. It is recognized that "[a]n abstract idea can generally be described at different levels of abstraction." *Apple*, 842 F.3d at 1240.

Second, to the extent Appellant argues that the Examiner erred in adequately supporting this determination by not providing evidence, we are unpersuaded. In this regard, there is no requirement that examiners must provide evidentiary support in every case before a conclusion can be made that a claim is directed to an abstract idea. *See, e.g.*, MPEP § 2106.07(a)(III). Moreover, the Federal Circuit made clear in *Berkheimer* that "not every § 101 determination contains genuine disputes over the underlying facts material to the § 101 inquiry." *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1368 (Fed. Cir. 2018). In fact, the Federal Circuit in *Berkheimer* did not require evidentiary support for independent claim 13 because "[t]he limitations [of claim 13] amount to no more than performing the abstract idea of parsing and comparing data with conventional computer components." *Id.* at 1370.

All that is required of the USPTO to meet its prima facie burden of production is that the Examiner set forth the statutory basis of the rejection and the reference or references relied upon in a sufficiently articulate and informative manner as to meet the notice requirement of 35 U.S.C. § 132. As the statute itself instructs, the Examiner must "notify the applicant," "stating the reasons for such rejection," "together with such information and references as may be useful in judging the propriety of continuing the prosecution of his application." 35 U.S.C. § 132; *see also In re Jung*, 637 F.3d 1356, 1363 (Fed. Cir. 2011) (declining "to impose a heightened burden on examiners beyond the notice requirement of § 132"). Here, as we found

above, the Examiner has made these findings as required by the statute. *See* Final Act. 2–7.

Appellant also argues, "[a] prima facie case of patent ineligibility has not been established, because the alleged abstract idea is untethered from the language of the claims." Appeal Br. 11 (emphasis omitted).

We disagree with Appellant again because, as determined above, the Examiner's findings made in the Final Action meet the requirements of 35 U.S.C. § 132. Notwithstanding, we direct Appellant's attention to the Examiner's "directed to" findings on pages 6–7 of the Final Action where the Examiner explicitly tethers bolded print claim limitations[5] to the fundamental economic practice and the mental process exemptions. The Examiner's characterization of claim 13 is thus, in our view, fully consistent with the Specification, including the claim language as set forth above as intrinsic evidence. Thus, the Examiner did provide sufficient evidentiary support for the *Alice* "step two–A" determination in this case.

Although we agree with Appellant that the claims must be read as a whole (Appeal Br. 12), we nevertheless find, on balance, that claim 13 recites the idea of ensuring adequate funds are available to cover the cost of a transaction for the reasons specified above with respect to our "directed to" findings. As found *supra*, claim 13 only includes the following generically recited device limitations: "an access device," "a portable consumer device," and "a server computer." What remains in the claim after disregarding these device limitations, are abstractions,

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[5] We note the Examiner's inclusion of the phrase "stores a balance" is deemed a typographic error without consequence of error. *C.f.*, Appeal Br. 10.

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> receiving, . . . a first account identifier associated with a first account, a second account identifier associated with a second account, and an alterable flag . . ., wherein the alterable flag links the first account and the second account, and wherein a state of the alterable flag indicates whether value is to be automatically transferred from the second account to the first account;
>
> generating, . . . a first authorization request message associated with a purchase transaction, wherein the first authorization request message includes the first account identifier associated with the first account, the second account identifier associated with the second account, a transaction amount, . . .;
>
> sending, . . . the first authorization request message, wherein . . . thereafter:
>
> analyz[ing] the first authorization request message,
>
> determin[ing] that the first account does not contain sufficient funds to pay for the transaction amount for the purchase transaction,
>
> determin[ing] the state of the alterable flag, and
>
> perform[ing] additional processing depending upon the state of the alterable flag, wherein, if the alterable flag is in a transfer state, the additional processing includes initiating a transfer of value from the second account to the first account by transmitting a request to an issuer of the second account, and transmitting a second authorization request message associated with the purchase transaction for the transaction amount to an issuer of the first account; and
>
> receiving an authorization response message.

"A claim for a new abstract idea is still an abstract idea." *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (Fed. Cir. 2016) (emphasis omitted) (citing *Mayo*, 566 U.S. at 90).

Likewise, we fail to see the similarities asserted by Appellant (Appeal Br. 13) between the claims on appeal here and those adjudicated in *DDR Holdings, LLC v. Hotels.com, L.P.* 773 F.3d 1245 (Fed. Cir. 2014).

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Appeal Br. 13. In *DDR Holdings*, the Court evaluated the eligibility of claims "address[ing] the problem of retaining website visitors that, if adhering to the routine, conventional functioning of Internet hyperlink protocol, would be instantly transported away from a host's website after 'clicking' on an advertisement and activating a hyperlink." *Id.* at 1257. There, the Court found that the claims were patent eligible because they transformed the manner in which a hyperlink typically functions to resolve a problem that had no "pre-Internet analog." *Id.* at 1258. The Court cautioned, however, "that not all claims purporting to address Internet-centric challenges are eligible for patent." *Id.* In the claims before us, there is no device which similarly transforms the manner in which a hyperlink typically functions to resolve a problem that had no "pre-Internet analog."

> Appellant next argues,
>
> The alterable flag can cause the central server computer to transfer funds from the second account to the first account, to ensure that the transaction can be completed with the first account. Note that this instruction to transfer occurs during an actual transaction, and is not performed before the transaction as in conventional systems.
>   As such, embodiments of the invention eliminate the need to contact a central Web server using another computer, prior to any transaction being conducted, to transfer funds from the second account to the first account.

Appeal Br. 14 (emphasis omitted).

We disagree with Appellant. First, the timing features the Appellant argues are not recited in the claims. We find that in this particular case, the broadly claimed sequence of information analysis and output focuses on the result, rather than the technical details of its implementation. It is generic

and conventional and is similar to language otherwise held to be abstract (*see Ultramercial*, 772 F.3d at 715 (sequence of receiving, selecting, offering for exchange, display, allowing access, and receiving payment recited an abstraction)). Appellant's argument is not commensurate with the broader scope of claim 13 which merely describes data flows in a network, without any technological mechanisms for doing so. The question is whether the claims as a whole "focus on a specific means or method that improves the relevant technology" or are "directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery." *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314 (Fed. Cir. 2016). In this case, claim 13 as a whole is focused on satisfying certain contingencies for ensuring adequate funds are available to cover the cost of a transaction. In other words, nothing in claim 13 purports to improve computer functioning or "effect an improvement in any other technology or technical field." *Alice*, 573 U.S. at 225.

Citing to *BASCOM Global Internet v. AT&T Mobility LLC*, 827 F.3d 1341, 1350 (Fed. Cir. 2016), Appellant asserts, "[t]his is an 'inventive concept' and is not an 'abstract idea,' because it is not conventional or well-understood, and is further concrete and tangible as it is run on multiple computers in a distributed system." Appeal Br. 18. Appellant's reliance on *BASCOM* is misplaced. In *BASCOM*, the Federal Circuit determined that the claimed installation of a filtering tool at a specific location, remote from the end-users, with customizable filtering features specific to each end user provided an inventive concept in that it gave the filtering tool both the benefits of a filter on a local computer and the benefits of a filter on the ISP server. *BASCOM*, 827 F.3d at 1350. The court, thus, held that the second

step of the *Mayo/Alice* framework was in favor the patent owner, because the claimed invention "represents a 'software-based invention[ ] that improve[s] the performance of the computer system itself.'" *BASCOM*, 827 F.3d at 1351 (alterations in original) (stating that like *DDR Holdings*, where the patent "claimed a technical solution to a problem unique to the Internet," the patent in *BASCOM* claimed a "technology-based solution . . . to filter content on the Internet that overcomes existing problems with other Internet filtering systems . . . making it more dynamic and efficient").

Here, however, Appellant does not identify, and we do not find, any improvement to computer technology analogous to the ordered combination described in *BASCOM* or any additional element or elements recited in claim 13 that yield an improvement in the functioning of a computer, or an improvement to another technology or technical field. There is nothing in the claim 13 which is similar to the intermediary device inserted between two otherwise conventional computer nodes to move the location where a process is otherwise ordinarily executed. In *BASCOM*, it was the location of the filtering element, whereas in the instant claims there is no such specific location of ordered combination elements.

Likewise unpersuasive are Appellant's analogies of the appealed claims to those in *Amdocs (Israel) Limited v. Openet Telecom Inc.*, 841 F.3d 1288 (Fed. Cir. 2016). Appeal Br. 19–20. In *Amdocs*, the court adopted the district court's interpretation of the claim term "enhance," stating, it approved "reading the 'in a distributed fashion' and the 'close to the source' of network information requirements into the term 'enhance.'" *Id.* at 1300. The court then went on to find the claim's "enhancing" limitation necessarily required that the generic components operate in an

unconventional manner to achieve an improvement in computer functionality. *Id.* at 1300–01. In this way, the claims of *Amdocs* are inconsistent with those before us on appeal here in that in the latter, no specific technologic modifications were required to solve a problem or improve the functioning of a known system generally to produce patent-eligible subject matter. *See, e.g.*, *DDR Holdings*, 773 F.3d 1245; *McRO*, 837 F.3d at 1315. No such problem or evidence showing how the claims solve a stated technical problem has been identified here other than attorney argument, and we are not persuaded that the claims are not directed to an abstract idea.

CONCLUSIONS OF LAW

We conclude the Examiner did not err in rejecting claims 13, 14, 16, 17, 27–29, and 31 under 35 U.S.C. § 101.

DECISION

Examiner's decision 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). *See* 37 C.F.R. § 1.136(a)(1)(iv).

Claims Rejected	35 U.S.C. §	Basis	Affirmed	Reversed
13, 14, 16, 17, 27–29, 31	101	Eligibility	13, 14, 16, 17, 27–29, 31	

AFFIRMED