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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte THOMAS SHERFEY CHITTENDEN JR,
PAUL MATTHEW KERN, BRADFORD IAN LOEWY, and
SETHURAMAN SUBRAMANIAN

Appeal 2018-005597
Application 13/853,387
Technology Center 3600

Before JAMES R. HUGHES, LINZY T. McCARTNEY, and
JESSICA C. KAISER, *Administrative Patent Judges*.

HUGHES, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Claims 1, 2, and 4–23 are pending, stand rejected, are appealed by Appellant,¹ and are the subject of our decision under 35 U.S.C. § 134(a). *See* Final Act. 1–2; Appeal Br. 4.² We have jurisdiction under 35 U.S.C. § 6(b).

¹ We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42(a). Appellant identifies the real party in interest as Wayne Fueling Systems LLC. Appeal Br. 1.

² Throughout our decision we refer to Appellant’s Specification (“Spec.”) filed Mar. 29, 2013 (claiming benefit of US 61/711,093 (filed Oct. 8, 2018)); Appeal Brief (“Appeal Br.”) filed Nov. 6, 2017; and Reply Brief (“Reply

We AFFIRM.

CLAIMED SUBJECT MATTER

The invention “relates to processing of transactions related to products and, in particular, to embodiments of systems and methods that facilitate transactions at retail fueling stations that occur via mobile devices.” Spec. ¶ 2; *see* Spec. ¶ 5; Abstract. Claims 1 (reciting a method), 14 (reciting a gateway component (a machine)), and 18 (reciting a system) are independent. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method of processing a transaction at a fueling station, said method comprising:

at a transaction gateway component comprising a processor and a non-transitory computer readable medium:

[A] receiving, from a mobile terminal, a site location code that corresponds to a retail fueling station that includes a plurality of fuel dispensers each configured to dispense fuel;

[B] accessing a database in response to the site location code;

[C] receiving site configuration information found in the database, the site configuration information corresponding to the received site location code, wherein the site configuration information comprises a plurality of product records that each relate to a different type of product available for sale at the fueling station, and wherein each of the product records comprise data that assigns the product in the product record either a reservable product identifier or a non-reservable product identifier;

Br.”) filed May 9, 2018. We also refer to the Examiner’s Final Office Action (“Final Act.”) mailed Aug. 15, 2017; and Answer (“Ans.”) mailed Mar. 9, 2018.

[D] receiving, from the mobile terminal, a product selection that identifies one or more of the product records in the retrieved site configuration information so as to select for purchase one or more of the different types of products available for sale at the retail fueling station;

[E] determining which of the products in the identified one or more product records are assigned with the reservable product identifier; and

[F] generating an output comprising a reservation command with data to reserve the one or more selected products determined to be assigned with the reservable product identifier, the one or more selected products assigned with the non-reservable product identifier not being reserved.

Appeal Br., Claims App. A (bracketed claim limitation designations added).

REJECTION

The Examiner rejects claims 1, 2, and 4–23 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. Final Act. 14–18.³

ANALYSIS

Subject Matter Eligibility—35 U.S.C. § 101

Under 35 U.S.C. § 101, a patent may be obtained for “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.” The Supreme Court has “long held that this provision contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable.” *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)).

³ The Examiner has withdrawn his rejection of the claims under 35 U.S.C. § 103. Ans. 3.

The Supreme Court, in *Alice*, reiterated the two-step framework previously set forth in *Mayo Collaborative Services, v. Prometheus Laboratories, Inc.*, 566 U.S. 66, 77–80 (2012). “[F]or distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice*, 573 U.S. at 217. The framework requires us first to consider “whether the claims at issue are directed to one of those patent-ineligible concepts.” *Alice*, 573 U.S. at 217. If so, we then examine “the elements of [the] claim both individually and ‘as an ordered combination’ to determine whether the additional elements ‘transform the nature of the claim’ into a patent-eligible application.” *Alice*, 573 U.S. at 217 (quoting *Mayo*, 566 U.S. at 78, 79). That is, we examine the claim for an “inventive concept,” “an element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.’” *Alice*, 573 U.S. at 217–18 (quoting *Mayo*, 566 U.S. at 72–73).

The Patent Office has published revised guidance concerning this framework and the application of § 101. USPTO’s 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) (hereinafter “2019 Revised Guidance”). Under that guidance, we first look to whether the claim recites:

- (1) any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, mental processes, or certain methods of organizing human activity such as a fundamental economic practice or managing personal behavior or relationships or interactions between people) (hereinafter “Step 2A, prong 1”); and

(2) additional elements that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h)) (hereinafter “Step 2A, prong 2”).⁴

See 2019 Revised Guidance, 84 Fed. Reg. at 51–52, 55.

A claim that integrates a judicial exception into a practical application applies, relies on, or uses 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. *See* 2019 Revised Guidance, 84 Fed. Reg. at 54. When the judicial exception is so integrated, then the claim is not directed to a judicial exception and is patent eligible under 35 U.S.C. § 101. *See* 2019 Revised Guidance, 84 Fed. Reg. at 54.

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, do we then evaluate whether the claim provides an inventive concept. *See* 2019 Revised Guidance, 84 Fed. Reg. at 56; *see also Alice*, 573 U.S. at 217–18.

For example, we 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.⁵

See 2019 Revised Guidance, 84 Fed. Reg. at 56.

⁴ All references to the MPEP are to the Ninth Edition, Revision 08-2017 (rev. Jan. 2018).

⁵ Items (3) and (4) are collectively referred to as “Step 2B” hereinafter and in the 2019 Revised Guidance.

With these principles in mind, we turn to the merits of the § 101 rejection. The Examiner rejects Appellant’s claims 1, 2, and 4–23 as being directed to patent-ineligible subject matter. *See* Final Act. 14–18; Ans. 3–5. Appellant does not separately argue the claims with specificity and, instead, argues the claims together (with respect to claim 1) for this rejection. *See* Appeal Br. 38. Accordingly, we address the Examiner’s rejection of independent claim 1 and the claims not separately argued by Appellant as a group based on claim 1, as permitted by 37 C.F.R. § 41.37(c)(1)(iv).

Statutory Subject Matter

Claim 1 recites a “method” (*supra*). Appellant’s “method” includes “a transaction gateway component” that further includes “a processor” and a “computer readable medium” that perform a process comprising a number of functions or steps. Appeal Br., Claim App. A (claim 1). Accordingly, we analyze Appellant’s method as a process for performing the delineated functionality, which is a statutory category of invention (subject matter) (USPTO’s Step 1).

Abstract Idea

The Examiner rejects Appellant’s claim 1 as being directed to patent-ineligible subject matter. *See* Final Act. 14–18; Ans. 3–5. Specifically, the Examiner concludes claim 1 and the other independent claims are “directed to a judicial exception (. . . an abstract idea) without significantly more”—“processing transactions at a retail fueling station using a mobile device” (Final Act. 14) because “claim 1 recites receiving a site location data, accessing a database, receiving site configuration information, receiving product selection, determining which product is assigned the product identifier and generating an output” (Final Act. 16). The Examiner also

concludes that the recited claim limitations “describe idea(s) which are analogous to the basic concepts collecting information, analyzing it, and displaying certain results of the collection and analysis” similar to *Electric Power Group*, and “collecting and comparing known information” similar to *Classen*. Final Act. 16–17 (citing *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016) and *Classen Immunotherapies, Inc. v. Biogen IDEC*, 659 F.3d 1057 (Fed. Cir. 2011)). See Final Act. 14–18; Ans. 3–5.

Appellant contends the Examiner erred in rejecting the claims as being directed to patent-ineligible subject matter. See Appeal Br. 22–34; Reply Br. 2–4. Specifically, Appellant contends, with respect to the first step of the *Alice* analysis, that the Examiner failed to present a prima facie patent eligibility analysis in that “the Examiner’s conclusory statement[s] . . . fail[] to provide the explanation necessary to establish a proper § 101 rejection.” See Appeal Br. 24–25. Appellant also contends *Electric Power* is not analogous to claim 1 because, *inter alia*, claim 1 is “not directed to the generic information gathering” (Appeal Br. 29) and “is not directed to the generic information analyzing that the court found problematic in *Electric Power*” (Appeal Br. 30). See Appeal Br. 25–31; Reply Br. 2–4. Appellant further contends *Classen* is not analogous to claim 1 because, *inter alia*, “claim 1 does not recite a method of purely mental steps and cannot be performed by a human using mental steps or basic critical thinking.” Appeal Br. 32; see Appeal Br. 31–33; Reply Br. 4. Additionally, Appellant contends “claim 1 is [not directed] to [a] fundamental economic practice” (Appeal Br. 34). See Appeal Br. 33–34.

For the reasons discussed below, we conclude Appellant’s claim 1 (and the other pending claims) recites abstract ideas, these abstract ideas are not integrated into a practical application, nor do they include an inventive concept. In view of the 2019 Revised Guidance, we clarify and expand the Examiner’s reasoning as follows.

We begin our analysis by broadly but reasonably construing Appellant’s claim 1 (*see* Appeal Br., Claims App. A). Omitting the portions of the claim invoking use of generic technology (which are discussed separately below), claim 1 focuses on (as stated in the preamble) “processing a transaction at a fueling station” by performing the delineated functionality (steps or functions). These functions elaborate on the fueling station transaction process, and comprise: (A) “receiving” or collecting information comprising “a site location code” of a fueling station (limitation A); (B) analyzing the collected (site location code) information by “accessing” stored data, where the accessing is “in response to” (utilizes) the “site location code” (limitation B); and (C) analyzing the collected (site location code) information by “receiving site configuration information,” which corresponds to the site location code (i.e., matching the site location code with corresponding site configuration information and providing the corresponding site configuration information), where the site configuration information is characterized as “a plurality of product records that each relate to a different type of product available for sale at the fueling station” and each product in the product record is assigned “a reservable product identifier or a non-reservable product identifier”—that is, the site configuration information includes product records (data/information) that are assigned (include) product identifiers (additional data/information)

(limitation C). The functions of the fueling station transaction process further include analyzing the received (collected) site configuration information by “receiving . . . a product selection” identifying “one or more of the product records” in the received site configuration information “so as to select for purchase one or more of the different types of products available for sale at the retail fueling station” (i.e., selecting a product and providing the selection) (limitation D). The functions of the fueling station transaction process also include analyzing the received selection information (selected product records) by “determining which of the [identified] product records are assigned with the reservable product identifier (limitation E). Additionally, the fueling station transaction process functionality includes “generating an output” that comprises “a reservation command . . . to reserve the one or more [reservable] selected products” (products “assigned with the reservable product identifier”) (limitation F).

Apart from the use of generic technology (discussed further below), each of the limitations of claim 1 describes “‘collecting information, analyzing it, and displaying [(outputting)] certain results of the collection and analysis,’ where the data analysis steps are recited at a high level of generality such that they could practically be performed in the human mind.” October 2019 Update: Subject Matter Eligibility 7, available at https://www.uspto.gov/sites/default/files/documents/peg_oct_2019_update.pdf (hereinafter “October 2019 Update”). The fueling station transaction process amounts to a mental process that is very similar to *Electric Power Group*. See *Elec. Power Grp.*, 830 F.3d at 1351–54.

A person can practically perform the functions of limitations A–F (receiving (acquiring or apprehending) site location information, accessing

stored data, receiving corresponding records that match other received (site location) information and include an assigned product identifier, receiving a product selection (identifying product records), determining if the identified product records are reservable (have an assigned reservable product identifier), and outputting a reservation) mentally, or by using pen and paper. Nowhere does Appellant point to specific claim limitations that distinguish over a human process. Further, the revised guidance explains that “mental processes” include acts that people can perform in their minds or using pen and paper, even if the claim recites that a generic computer component performs the acts. *See* 2019 Revised Guidance, 84 Fed. Reg. 52 n.14 (“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.”) Because each of the limitations discussed above encompasses an act that people can perform in their minds or using pen and paper, claim 1 recites mental processes. Appellant’s arguments have not persuaded us otherwise. *See Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1340 (Fed. Cir. 2017) (identifying the abstract idea of collecting, displaying, and manipulating data); *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat’l Ass’n*, 776 F.3d 1343, 1345, 1347 (Fed. Cir. 2014) (finding the “claims generally recite . . . extracting data [and] recognizing specific information from the extracted data” and that the “claims are drawn to the basic concept of data recognition”). Even where the analysis requires one to access and gather data, or utilize a pen and paper in the analysis, such analysis may still be an abstract mental process. *See CyberSource Corp. v.*

Retail Decisions, Inc., 654 F.3d 1366, 1372 (Fed. Cir. 2011) (“[E]ven if some physical steps are required to obtain information from the database . . . such data-gathering steps cannot alone confer patentability.”).

Also, apart from the use of generic technology (discussed further below), each of the limitations of claim 1 describes activities that would be performed during a common commercial transaction at a fueling station: limitations A–F describe collecting and analyzing information (recognizing or apprehending a location, recognizing or apprehending different products at the location, selecting a product, and determining if a product is reservable), and purchasing the product (reserving the product for purchase). Claim 1 thus also recites certain methods of organizing human activity. *See* Final Act. 3 (determining that “[t]he conceptual idea of processing transactions at a retail fueling station using a mobile device is a fundamental economic practice”); 2019 Revised Guidance, 84 Fed. Reg. at 52 (explaining that certain methods of organizing human activity include fundamental economic principles or practices and commercial or legal interactions).

Appellant’s contentions (*supra*) focus on the Examiner’s purported improper analysis of the claims (in particular claim 1) and the Examiner’s purported failure to establish a *prima facie* case of unpatentability. *See* Appeal Br. 24–25. Here, in rejecting the claims (in particular claim 1) under 35 U.S.C. § 101, the Examiner analyzed the claims using the *Mayo/Alice* two-step framework, consistent with the guidance set forth in the USPTO’s “2014 Interim Guidance on Patent Subject Matter Eligibility,” 79 Fed. Reg. 74618 (Dec. 16, 2014), in effect at the time the rejection was made on August 15, 2017. The Examiner notified Appellant of the reasons for the rejection “together with such information and references as may be useful in

judging of the propriety of continuing the prosecution of . . . [the] application.” 35 U.S.C. § 132; *see* Final Act. 2–4. In doing so, the Examiner set forth a *prima facie* case of unpatentability such that the burden of production shifted to Appellant to demonstrate that the claims are patent eligible.

To the extent Appellant argues utilizing devices (e.g., the processor, computer readable medium, database, and mobile terminal) to perform the recited functionality is not abstract, Appellant misconstrues the inquiry. As we explained *infra*, the devices are additional elements that are not part of this part of the abstract idea analysis. The relevant inquiry is whether the processes (functionality) recited in the claims (in particular claim 1) are abstract. *Cf. ChargePoint, Inc. v. SemaConnect, Inc.*, 920 F.3d 759, 770 (Fed. Cir. 2019) (“[A]s the Supreme Court indicated in *Alice*, whether a device is ‘a tangible system (in § 101 terms, a “machine”)’ is not dispositive.” (quoting *Alice*, 573 U.S. at 224)); *In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d 607, 611 (Fed. Cir. 2016) (“[N]ot every claim that recites concrete, tangible components escapes the reach of the abstract-idea inquiry.”).

In summary, we conclude Appellant’s claim 1 recites a judicial exception (USPTO’s Step 2A, Prong 1; *see* 2019 Revised Guidance). Specifically, claim 1 recites a process for making a transaction (reserving for purchase a product) at a fueling station—the fueling station transaction process—by apprehending a site location, recognizing products at the location, selecting a product, determining if the identified product is reservable, and reserving the selected product, as discussed *supra*. The fueling station transaction process consists of mental processes that can be

practically performed in the human mind (or utilizing pen and paper) including observation, evaluation, or judgment. *See* 2019 Revised Guidance, 84 Fed. Reg. at 52, 53 (listing “[m]ental processes—concepts performed in the human mind (including an observation, evaluation, judgment, opinion)” as some of the “enumerated groupings of abstract ideas” (footnote omitted)). The fueling station transaction process also encompasses certain methods of organizing human activity. *See* 2019 Revised Guidance, 84 Fed. Reg. at 52 (explaining that certain methods of organizing human activity include fundamental economic principles or practices and commercial or legal interactions).

Practical Application

Having determined that claim 1 recites an abstract idea, we next determine, under Step 2A, Prong 2 of the 2019 Revised Guidance, whether the claims are directed to that abstract idea, or whether the claims integrate the abstract idea into a practical application of that abstract idea. *See* 2019 Revised Guidance, 84 Fed. Reg. at 54. In doing so, we evaluate the claim as a whole to determine whether the claim “integrate[s] the [abstract idea] into a practical application, using one or more of the considerations laid out by the Supreme Court and the Federal Circuit.” 2019 Revised Guidance, 84 Fed. Reg. at 55; *see also* October 2019 Update at 12 (discussing the practical application analysis). That is, we consider any additional elements recited in the claim along with the limitations that recite an abstract idea to determine whether the claim integrates the abstract idea into a practical application. *See* October 2019 Update at 12.

Claim 1 recites additional elements beyond the abstract fueling station transaction process (the judicial exception). The additional elements in

claim 1 include “transaction gateway component” (which further includes the “processor” and the “computer readable medium”), the “database,” and the “mobile terminal.” Appeal Br., Claim App. A (claim 1).

Appellant’s Specification describes a “data processing system for analyzing data and performing other analyses” including “a data processing system 402” and “a data storage system 408”; and the “transaction gateway component” may include “one or more of systems 402 [and] 408.” Spec.

¶ 63. “The data processing system 402 includes one or more data processor(s)” and a

“data processor” is a device for automatically operating on data and can include a central processing unit (CPU), a desktop computer, a laptop computer, a mainframe computer, a personal digital assistant, a digital camera, a cellular phone, a smartphone, or any other device for processing data, managing data, or handling data

Spec. ¶ 64. Similarly, Appellant’s Specification describes the data storage system 408 including “one or more tangible non-transitory computer-readable storage medium(s) configured to store information [and] [a] “tangible non-transitory computer-readable storage medium” as used herein refers to any non-transitory device . . . that participates in storing instructions which may be provided to the processor for execution.” Spec. ¶ 66.

Appellant’s Specification also describes accessing the database, where “[e]xemplary databases include relational databases, flat file, key-value file, or other system for storing data.” Spec. ¶ 32. Appellant’s Specification further describes the mobile terminal (mobile device) as “a mobile device (e.g., a smartphone and/or other terminal)” (Spec. ¶ 5), “a terminal, such as a mobile telephone” (Spec. ¶ 76), and “terminal 112 can include a variety of

portable computing devices (e.g., computers, cellular phones, smartphones, tablets, personal digital assistants, laptops, etc.)” (Spec. ¶ 17).

In summary, Appellant’s written description does not portray the transaction gateway component, processor, computer readable medium, database, and mobile terminal, or other enumerated additional elements as anything but standard computer components. Nor does Appellant’s written description portray these components as operating in a new way. Instead, the written description depicts these components as generic components operating in their accustomed manner.

Accordingly, Appellant’s written description shows that these additional elements are generic. *See Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1384 (Fed. Cir. 1986) (“[A] patent need not teach, and preferably omits, what is well known in the art.”); *Intellectual Ventures I LLC v. Erie Indem. Co.*, 850 F.3d 1315, 1331 (Fed. Cir. 2017) (“The claimed mobile interface is so lacking in implementation details that it amounts to merely a generic component (software, hardware, or firmware) that permits the performance of the abstract idea, i.e., to retrieve the user-specific resources.”).

None of these additional elements, whether taken alone or in the context of the claims as a whole, integrate the judicial exception into a practical application. In particular, the recited limitations including the additional elements may improve the mental process or certain method of organizing human activity for facilitating a fueling station transaction process, but do not describe an improvement in the functioning of a computer, or an improvement to other technology or technical field. *See Revised Guidance*, 84 Fed. Reg. at 55.

Appellant contends claim 1 recites elements for “processing a transaction at a fueling station” (Appeal Br. 36) that “constitute an improvement to computer-related technologies because they allow for a transaction gateway component to reserve reservable products available for sale at the fueling station” (Appeal Br. 36–37), i.e., technical improvements provided by the process of claim 1. *See* Appeal Br. 36–37. In other words, Appellant contends the claims recite a technological improvement that amounts to more than simply utilizing a computer as a tool to accomplish the fueling station transaction process.

Appellant’s contentions correspond to the reasoning in MPEP § 2106.05(a), where additional elements integrate the judicial exception into a practical application. We, however, disagree with Appellant’s contentions. Appellant’s additional elements do not apply or use the fueling station transaction process (the judicial exception) in a manner that imposes a meaningful limit on the judicial exception, such that it is more than a drafting effort designed to monopolize the exception. *See Alice*, 573 U.S. at 221–24 (citing *Mayo*, 566 U.S. at 78–85). Rather, Appellant’s claim recites generic computer elements (e.g., the processor and mobile terminal) that are utilized as tools to carry out the exchange of information and information analysis to determine various information for performing a transaction (reserving products for purchase) as discussed *supra*. Utilizing computers as tools to perform common data information analysis and data collection functions that can be mental processes or certain methods of organizing human activity (an abstract idea) does not impose a meaningful limit on the abstract idea. *See* MPEP § 2106.05(f); *see also Alice*, 573 U.S. at 223 (finding “if [the] recitation of a computer amounts to a mere instruction to

implement an abstract idea on a computer that addition cannot impart patent eligibility”) (quotations and citations omitted).

Appellant’s claim 1 (and the other pending claims) can be distinguished from patent-eligible claims such as those in *McRO*, *Enfish*, *BASCOM*, and *DDR Holdings* that are directed to “a specific means or method that improves the relevant technology” (*McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314 (Fed. Cir. 2016)), or “a specific improvement to the way computers operate” (*Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1336 (Fed. Cir. 2016)), solving a technology-based problem (*BASCOM Global Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1349–52 (Fed. Cir. 2016)), or a method “rooted in computer technology in order to overcome a problem specifically arising in the realm of computer [technology]” (*DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1257 (Fed. Cir. 2014)). Contrary to Appellant’s arguments, claim 1 is not a technological improvement or an improvement in a technology. Appellant’s claim 1 does not “improve the functioning of the computer itself” or “any other technology or technical field.” *Alice*, 573 U.S. at 225. Nor does it provide a technological solution to a technological problem. *See DDR Holdings*, 773 F.3d at 1257; MPEP § 2106.05(a). Appellant fails to explain sufficiently and persuasively how the instant claim(s) are directed to an improvement in the way computers operate, nor has Appellant identified any technical advance or improvement or specialized computer components. *See Appeal Br.* 36–37.

In summary, “the focus of the claims is not on such an improvement in computers as tools, but on certain independently abstract ideas that use computers as tools.” *Elec. Power Grp.*, 830 F.3d at 1354; *see also* MPEP

§ 2106.05(f) (instructing Examiners to consider “[w]hether the claim invokes computers or other machinery merely as a tool to perform an existing process” in determining whether the claim recites mere instructions to apply the exception) (cited in 2019 Revised Guidance, 84 Fed. Reg. at 55 n.30) (emphasis omitted). Thus, we conclude the claims are directed to an abstract idea that is not integrated into a practical application.

Inventive Concept

Having concluded Appellant’s claims are directed to an abstract idea under the 2019 Revised Guidance (Step 2A analysis), we consider whether claim 1 has an inventive concept, that is, whether the claim has additional elements that “‘transform the nature of the claim’ into a patent-eligible application.” *Alice*, 573 U.S. at 217 (quoting *Mayo*, 566 U.S. at 78, 79). As discussed above, this requires us to evaluate whether the additional claim elements add “a specific limitation or combination of limitations that are not well-understood, routine, conventional activity in the field” or “simply append[] well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality.” 2019 Revised Guidance, 84 Fed. Reg. at 56.

The Examiner determined that Appellant’s claim 1 (and the other pending claims) “do not include any additional elements that are sufficient to amount to significantly more than the judicial exception since the additional element[s] when considered both individually and as an ordered combination do not amount to significantly more than the abstract idea.” Final Act. 17; *see* Final Act. 15–18; Ans. 4–5. Specifically, the Examiner concluded that “the additional computer elements, which are recited at a high level of generality, provide conventional computer functions that do not add

meaningful limitations to practicing the abstract idea” (Final Act. 15) and “the additional limitations” are “generic computer components [that] are claimed to perform their basic functions of storing, retrieving, processing, and displaying that are well understood, routine, and conventional activities which amount to no more than implementing the abstract idea with a computerized programmed system” (Final Act. 17). *See* Final Act. 15–18; Ans. 4–5.

Appellant does not address explicitly which additional elements are not well-known, routine, or conventional, or how the additional elements perform functions that are not well-known, routine, and conventional with respect to the second step of the *Alice* analysis. Appellant does, however, contend claim 1 (as well as the other pending claims) should be upheld under the Step 2B analysis. *See* Appeal Br. 35–38; Reply Br. 3–4. Specifically, Appellant contends “the elements of claim 1 taken individually and as an ordered combination amount to significantly more than the abstract idea identified in Step 2A and transform the nature of the claim into a patent-eligible application” (Appeal Br. 35) and the Examiner’s rejection, with respect to Step 2B, “fails to meet the burden required for a proper § 101 rejection” because it “amounts to nothing more than a conclusory statement that the claim lacks significantly more than well-known activities” (Appeal Br. 36). *See* Appeal Br. 35–38.

Appellant fails to persuade us of error in the Examiner’s rejection with respect to the second *Alice* step (USPTO’s Step 2B). We agree with the Examiner that Appellant’s claim 1 (as well as the other pending claims) does not evince an “inventive concept” that is significantly more than the abstract idea itself. In particular, Appellant fails to explain how the additional

elements (*supra*) add specific limitations beyond the judicial exception that are not well-understood, routine, and conventional in the field.

As previously discussed, claim 1 merely recites additional non-abstract elements (the transaction gateway component, processor, computer readable medium, database, and mobile terminal) that perform the fueling station transaction process. The record supports the Examiner’s findings (*see* Final Act. 15–18; Ans. 4–5) that the additional elements, individually and as an ordered combination, are generic computer components that carry out common information collection and analysis functions recited in the fueling station transaction process (the abstract idea), and that the additional elements are well-understood, routine, and conventional, specified at a high level of generality. *See, e.g.*, Spec. ¶¶ 5, 17, 32, 63, 64, 66, 76; Ans. 4–5; *see also* Revised Guidance, 84 Fed. Reg. at 56.

Such conventional computer processes operating on conventional computer hardware “do not alone transform an otherwise abstract idea into patent-eligible subject matter.” *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1096 (Fed. Cir. 2016) (citing *DDR Holdings*, 773 F.3d at 1256). Further, generically claimed elements of a component (transaction gateway component), a processor, a medium (computer-readable medium), a database, and a mobile device (mobile terminal) have been found to be no more than well-understood, routine, and conventional activity in the context of gathering, assembling, and analyzing information. *See, e.g., Berkheimer v. HP Inc.*, 881 F.3d 1360, 1370 (Fed. Cir. 2018) (“These conventional limitations of claim 1, combined with limitations of analyzing and comparing data and reconciling differences between the data . . . amount to

no more than performing the abstract idea of parsing and comparing data with conventional computer components.”).

To the extent that Appellant argues that the purported technical improvements and benefits of the fueling station transaction process (the abstract idea) in conjunction with the additional elements provide significantly more than the abstract idea, we are not persuaded. *See* Appeal Br. 35–38. According to Appellant, claim 1 recites purported benefits and technical improvements—“claim 1 recites elements for processing a transaction at a fueling station . . . include[ing] . . . a site location code, site configuration information, . . . product selection[,] and generation of an output including a reservation command” that “constitute an improvement to computer-related technologies because they allow for a transaction gateway component to reserve reservable products available for sale at the fueling.” Appeal Br. 36–37. The purported benefits and technical improvements, however, flow from the abstract idea and not the *additional* elements. That is, other than using generic technology, the purported benefits and improvements are elaborations on the basic abstract idea itself. “It is clear from *Mayo* that the ‘inventive concept’ cannot be the abstract idea itself.” *Aatrix Software, Inc. v. Green Shades Software, Inc.*, 890 F.3d 1354, 1359 (Fed. Cir. 2018).

Appellant also fails to persuade us that the Examiner did not support the determination that the additional elements are well-known, routine, and conventional. The Examiner provides citations to several court decisions, which discuss well-known, routine, and conventional activity, and that support the Examiner’s determination. *See* Ans. 5. Appellant does not address the Examiner’s citations or reasoning.

“The second step of the *Alice* test is satisfied when the claim limitations ‘involve more than performance of []well-understood, routine, [and] conventional activities previously known to the industry.’” *Berkheimer v. HP Inc.*, 881 F.3d at 1367 (quoting *Content Extraction*, 776 F.3d at 1347–48 and *Alice*, 573 U.S. at 225). “Whether something is well-understood, routine, and conventional to a skilled artisan at the time of the patent is a factual determination.” *Berkheimer*, 881 F.3d at 1369; see 2019 Revised Guidance, 84 Fed. Reg. at 56.

Accordingly, we find the Examiner has supported the finding that that the additional elements are well-known, routine, and conventional, and we agree with the Examiner (Ans. 4–5) that the additional elements (*supra*) are well-known, routine, and conventional. The Examiner has provided support from at least category 2 (below) of the four categories of information required by the USPTO’s guidance in its *Berkheimer* Memo:⁶

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)

⁶ Memorandum from Robert W. Bahr, entitled “Changes in Examination Procedure Pertaining to Subject Matter Eligibility, Recent Subject Matter Eligibility Decision (*Berkheimer v. HP, Inc.*),” dated April 19, 2018 (“*Berkheimer* Memo”). The *Berkheimer* Memo is available at <https://www.uspto.gov/sites/default/files/documents/memo-berkheimer-20180419.PDF> (last visited May. 25, 2019).

4. A statement that the examiner is taking official notice of the well-understood, routine, conventional nature of the additional element(s)

Berkheimer Memo at 3–4.

For at least the reasons above, Appellant has not persuasively shown the additional elements amount to significantly more than the abstract idea when considered either individually or as a combination, and we are not persuaded of Examiner error in the rejection of claim 1 under 35 U.S.C. § 101. Thus, we sustain the Examiner’s rejection under 35 U.S.C. § 101 of independent claim 1, independent claims 14 and 18, and dependent claims 2, 4–13, 15–17, and 19–23, which depend from claims 1, 14, and 18, respectively, and which were not argued separately with specificity.

CONCLUSION

For the reasons discussed above, we determine that claims 1, 2, and 4–23 are directed to an abstract idea and do not demonstrate an inventive concept. Appellant has not shown that the Examiner erred in rejecting claims 1, 2, and 4–23 under 35 U.S.C. § 101.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/ Basis	Affirmed	Reversed
1, 2, 4–23	101	Eligibility	1, 2, 4–23	

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TIME PERIOD FOR RESPONSE

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