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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* JEFFREY CORDELL

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Appeal 2018-006014  
Application 14/738,602<sup>1</sup>  
Technology Center 2600

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Before ELENI MANTIS MERCADER, JASON J. CHUNG, and  
BETH Z. SHAW, *Administrative Patent Judges*.

MANTIS MERCADER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134 from a rejection of claims 1–  
20. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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<sup>1</sup> According to Appellant, the real party in interest is Language Line Services, Inc. App. Br. 2.

### CLAIMED SUBJECT MATTER

The claims are directed to a multi-channel cross-modality system for providing language interpretation/translation services. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A computer implemented language interpretation/translation platform comprising:

a receiver that receives, via a network, a request for computerized interface data from a computing device and receives, via the network, a plurality of interface data from a plurality of distinct language interpretation/translation platforms, each of the plurality of distinct language interpretation/translation platforms providing a language interpretation/translation service according to a distinct modality from each other such that each distinct modality is based on a distinct channel for a distinct form of delivery of the language interpretation/translation service by a human language interpreter/translator;

a processor that automatically aggregates the plurality of interface data from the plurality of distinct language interpretation/translation platforms in real-time, as measured from a time that the request was received to a subsequent time without a perceivable time delay, into a computerized interface format; and

a transmitter that sends, via the network, the computerized interface format to the computing device for display by the computing device so that the computing device receives a selection of an optimal language interpretation/translation service.

### REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Hess	US 2005/0086044 A1	Apr. 21, 2005
Wang	US 2009/0204389 A1	Aug. 13, 2009

Chary                      US 2013/0085881 A1      Apr. 4, 2013  
Kidwai                     US 2016/0019205 A1      Jan. 21, 2016

*Interpretation*, Transperfect,

<https://www.transperfect.com/services/interpretation.html> (last visited Aug. 10, 2017) (hereinafter “Transperfect”).

*Language Innovations*, Yelp,

<https://www.yelp.com/biz/language-innovations-washington?osq=interpreter> (last visited May 26, 2016) (hereinafter “Yelp”).

#### REJECTIONS

Claims 1–20 stand rejected under 35 U.S.C. § 112, first paragraph as failing to comply with written description requirement.

Claims 1–20 stand rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which the inventor regards as the invention.

Claims 1–20 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to a judicial exception (i.e., a law of nature, a natural phenomenon, or an abstract idea) without significantly more.

Claims 1–4, 7–8, 10, 12–16, and 19–20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hess in view of Kidwai and further view of Transperfect.

Claims 5–6 and 17–18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hess in view of Kidwai and Transperfect and further in view of Chary.

Claim 9 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Hess in view of Kidwai and Transperfect and further in view of Yelp.

Claim 11 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Hess in view of Kidwai and Transperfect and further in view of Wang.

### OPINION

Except where indicated, we adopt the Examiner's findings in the Answer and Final Office Action and we add the following primarily for emphasis. We note that if Appellant failed to present arguments on a particular rejection, we decline to review unilaterally those uncontested aspects of the rejection. *See Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential); *Hyatt v. Dudas*, 551 F.3d 1307, 1313–14 (Fed. Cir. 2008) (the Board may treat arguments Appellant failed to make for a given ground of rejection as waived).

*Claims 1–20 rejected under 35 U.S.C. § 112, first paragraph*

The Examiner rejected claims 1–20 under the written description requirement finding that the claimed terminology of “*aggregates the plurality of interface data . . . in real-time, as measured from a time that the request was received to a subsequent time without a perceivable time delay,*” is not defined anywhere in the Specification (emphasis added). *See* Final Act. 3. The Examiner, in particular, finds that there is no written description support for the definition in amended claims 1 and 13 of “real time, as measured from a time that the request was received to a subsequent time without a perceivable time delay.” *Id.*

Appellant responds:

Thus, one of ordinary skill in the art would not require additional definition in the Specification (as explained by MPEP Section 2163.02) to understand that the term “real time” refers to “ ..., as measured from a time that the request was received to a subsequent time without a perceivable time delay.” For example, the instant Specification states that “[t]he computerized interface allows the user to obtain a real-time or near real-time set of data that helps the user determine which interpretation/translation service is the most optimal based upon the customer’s **current interpretation/translation needs** (emphasis added).” Specification, para. [0017]. Measuring real-time without a perceivable time delay is consistent with determining an optimal interpretation/translation service based upon the customer’s current interpretation/translation needs.

Conversely, if a perceivable delay was present, the computerized interface may not be able to aggregate data quickly enough for the customer’s current interpretation/translation needs as the data can have “significant fluctuations” (Specification, para. [0017]). Accordingly, the plain and ordinary meaning of “real time,” as specified in claim 1, is consistent with the instant Specification.

App. Br. 6.

Appellant’s characterization of the term real-time, pertaining to a response time “based upon the customer’s **current interpretation/translation needs**” is consistent with the customary definition defined, in pertinent part, as “Real-time operations are characteristic of aircraft guidance systems, transaction-processing systems, scientific applications, and other areas in which a computer must respond to situations as they occur (for example, animating a graphic in a flight simulator or making corrections based on measurements).” *Microsoft Computer Dictionary*, Fifth Edition, p. 441 (copyrighted 2002). Claim terms are presumed to have their customary and ordinary meaning unless there is

an express intention to impart the novel meaning of the claim terms.

*SunRace Roots Enterprise Co. v. SRAM Corp.*, 336 F.3d 1298, 1302 (Fed. Cir. 2003).

Accordingly, one skilled in the art would know that “real time” as it pertains to the claimed limitation “interpretation/translation platforms in real-time, as measured from a time that the request was received to a subsequent time without a perceivable time delay” means providing the aggregated data of interpretation/translation platforms to address the customer’s current need. While the Examiner questions the degree of response to a particular number of milliseconds (*see* Ans. 18), one skilled in the art would recognize that “real-time” in the context of computer applications means almost simultaneously. We also do not agree with the Examiner’s finding of new matter (Ans. 19) because, again, one skilled in the art would recognize that this automatic aggregation using computer technology would mean almost simultaneous response.

Thus, we do not sustain the Examiner’s rejection of claims 1–20 under 35 U.S.C. § 112, first paragraph.

*Claims 1–20 rejected under 35 U.S.C. § 112, second paragraph*

The Examiner rejected claims 1–20 as vague and indefinite because the term "in real time" is used in the claims without defining the term in the specification, leading to uncertain bounds for the limitations and rendering the claims indefinite. While the addition of "as measured from a time that the request was received to a subsequent time without a perceivable time delay", establishes a starting point for "in real time", there is no definite end point as it is unclear who or what is perceiving the time delay and the minimum quantity of time that it/they can perceive, thus the claims are still indefinite.

Final Act. 3.

We do not agree with the Examiner's finding because as we stated *supra*, one skilled in the art would know that in the realm of the interpretation/translation platforms to address the customer's *current need* in the context of computer technology, it would mean the time response of almost simultaneously.

Accordingly, we do not sustain the Examiner's rejection of claims 1–20 as vague and indefinite.

*Claims 1–20 rejected under 35 U.S.C. § 101*

Appellant argues that the claims are directed to an improvement of computer functionality. App. Br. 9. In particular, Appellant argues that “[t]he multi-channel cross-modality system improves the functionality of a computer by providing more information than previous systems to a user so that the computer can select the most optimal interpretation/translation for the user based upon a user input, an automatically generated recommendation, or an automatic determination.” *Id.* Appellant further argues that one of ordinary skill in the art would understand that displaying more information in one computerized interface would involve smaller memory requirements for a computer than having to display multiple computerized interfaces. *Id.*

We are not persuaded by Appellant's argument. 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*. *Id.* 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 Alice*, 573 U.S. at 219 (“On their face, the claims before us are drawn to the concept of intermediated settlement, *i.e.*, the use of a third party to mitigate settlement risk.”); *see also Bilski v. Kappos*, 561 U.S. 593, 611 (2010) (“Claims 1 and 4 in petitioners’ application explain the basic concept of hedging, or protecting against risk.”).

Concepts determined to be abstract ideas, and, thus, patent ineligible, include certain methods of organizing human activity, such as fundamental economic practices (*Alice*, 573 U.S. at 219–20; *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 (1853))); 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 176; *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 citation omitted). “A claim that recites an abstract idea must include ‘additional features’ to ensure ‘that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].’” *Id.* (quoting *Mayo*, 566 U.S. at 77). “[M]erely requir[ing] generic computer implementation[] fail[s] to transform that abstract idea into a patent-eligible invention.” *Id.*

The PTO recently published revised guidance on the application of § 101. *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Memorandum”). 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, 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) (9<sup>th</sup> Ed., Rev. 08–2017 (Jan. 2018))).

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* Memorandum.

In the instant case, claim 1, as a whole, recites computer implemented platform of a mental process that can be performed in the mind. In particular, claim 1 allows aggregating information regarding available interpretation/translation services in response to a request. This limitation, as drafted under its broadest reasonable interpretation, covers performance of the limitation in the mind or by a human using a pen and paper but for the recitation of generic computer components. That is, other than reciting a “network” and a “processor” at a high level of generality, nothing in the claim precludes performing the aggregation of the information in the mind or by a human using a pen and paper. Furthermore, the “aggregates the plurality of interface data from the plurality of distinct language

interpretation/translation platforms in real-time” and “display by the computing device so that the computing device receives a selection of an optimal language interpretation/translation service” language encompasses for example the user manually recording the available interpretation/translation services from various media sources available through the internet and displaying them on a piece of paper for a requester. Thus, the claim recites a mental process executed on a computer implemented platform.

Because the claims recite an apparatus executing a mental process under *Alice* step 1, prong 1, we proceed to *Alice* step 1, prong 2—i.e., we determine whether the mental process is integrated into a practical application.

Here, the network, the processor, the computing device, and the computerized interface are recited at a high level of generality, i.e., as a generic processor and user interface performing a generic computer function of processing data (receiving information regarding interpretation/translation services, aggregating the information, and displaying such information). This generic processor limitation is no more than mere instructions to apply the exception using a generic computer component. The mere nominal recitation of a generic computing device and the use of a processor to aggregate the data into a computer listing for display does not take the claim limitation out of the mental processes grouping. As explained in *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015), “relying on a computer to perform routine tasks more quickly or more accurately is insufficient to render a claim patent eligible.” *See also Alice*, 573 U.S. at 224 (“use of a computer to create electronic records, track

multiple transactions, and issue simultaneous instructions” is not an inventive concept). “[I]nterchangeability of certain mental processes and basic digital computation . . . help explain why the use of a computer in an otherwise patent-ineligible process for no more than its most basic function . . . fails to circumvent the prohibition against patenting abstract ideas and mental processes.” *Bancorp Servs., L.L.C. v. Sun Life Assur. Co. of Can. (U.S.)*, 687 F.3d 1266, 1278 (Fed. Cir. 2012). In other words, “[u]sing a computer to accelerate an ineligible mental process does not make that process patent-eligible.” *Bancorp Servs*, 687 F.3d at 1279. “Simply adding a ‘computer aided’ limitation to a claim covering an abstract concept, without more, is insufficient to render the claim patent eligible.” *Dealertrack, Inc. v. Huber*, 674 F.3d 1315, 1333 (Fed. Cir. 2012).

The additional elements of the claim form part of the recited abstract ideas and thus are not “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); *see also* 2019 Eligibility Guidance, 84 Fed. Reg. at 55 n.24 (“USPTO guidance uses the term ‘additional elements’ to refer to claim features, limitations, and/or steps that are recited in the claim *beyond the identified judicial exception*.” (emphasis added)). Thus, the additional elements do not integrate the abstract idea into a practical application because they do not impose any meaningful limits on practicing the abstract idea.

Moreover, the additional elements of generic components or mere instructions executed by generic components do not provide an inventive concept. Appellant’s Specification describes using generic components such as “a general purpose computer or any other hardware equivalents” and

“[t]he processes . . . may be implemented in a general, multi-purpose or single purpose processor.” Spec. ¶¶ 38, 49. Appellant’s Specification recites “a computer may be a PC, laptop computer, set top box, cell phone, smartphone, tablet device, portable media player, video player, etc.” *Id.* ¶ 50. Thus, Appellant’s Specification demonstrates that the additional elements are well-understood, routine, or conventional.

Accordingly, claim 1 is directed to an abstract idea without significantly more. Similarly, claims 2–20 are directed to an abstract idea without significantly more for the same reasons set forth above. Thus, we sustain the Examiner’s rejection of claim 1 and, for the same reasons, the Examiner’s rejections of claims 2–20.

*Claims 1–20 rejected under 35 U.S.C. § 103(a)*

Appellant argues that claim 1 recites “real-time, as measured from a time that the request was received to a subsequent time without a perceivable time delay, into a computerized interface format,” and the Final Office Action has not demonstrated any rationale for why the actual claim recitation is an obvious result from Hess. App. Br. 11. Appellant further argues that “a prior generation personal computer may not have had the processing power needed to determine an optimal solution for a user’s current interpretation/translation needs as the personal computer may have taken several minutes or hours to aggregate the interface data.” *Id.*

We do not agree. The Examiner finds, and we agree, that “as fast as the computer is able” was adopted as the interpretation for “real time, as measured from a time that the request was received to a subsequent time without perceivable time delay, into a computerized interface format.” Ans. 25. Since Appellant utilizes a general purpose computer or any other

hardware equivalents for this invention rather than specially designed hardware optimized for this task (*see* paragraph 38 of the Specification), if additional performance was required, then it would be obvious for a person having ordinary skill in the art to try using a faster processor, since there are a limited number of commercially available processors to choose from.<sup>2</sup> *Id.* Therefore, we agree with the Examiner’s finding that Hess suggests the limitation “real time, as measured from a time that the request was received to a subsequent time without perceivable time delay, into a computerized interface format” as required by claim 1.

Furthermore, Appellant admitted that “real-time” would be the time that addresses the user’s *current need* for a translation service. *See* App, Br. 6. Thus, the Examiner broadly but reasonably relied on Hess paragraphs’ 34–36, teaching the automatic generation of a list of candidates for translations services to a user as meeting the real-time limitation (Final Act. 7–8), because this is performed to address the user’s current needs, otherwise there would be no reason to aggregate the services for the user.

Accordingly, we sustain the Examiner’s rejection of claim 1 and for the same reasons the rejections of claims 2–20.

## DECISION

We reverse the Examiner’s decision rejecting claims 1–20 under 35 U.S.C. § 112, first paragraph.

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<sup>2</sup> The Examiner references paragraph 72, but this appears to be an inadvertent error, because there is no paragraph 72 in the Specification and the reference to a general purpose computer appears in paragraph 38.

Appeal 2018-006014  
Application 14/738,602

We reverse the Examiner's decision rejecting claims 1–20 under 35 U.S.C. § 112, second paragraph.

We affirm the Examiner's decision rejecting claims 1–20 under 35 U.S.C. § 101.

We affirm the Examiner's decision rejecting claims 1–20 under 35 U.S.C. § 103.

Because we affirm on at least one ground of rejection with respect to each claim on appeal, we affirm the Examiner's decision to reject claims 1–20. *See* 37 C.F.R. § 41.50(a)(1).

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).

AFFIRMED