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Prince Lobel Tye LLP
One International Place
Suite 3700
Boston, MA 02110

EXAMINER
BARTLEY, KENNETH

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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 YOSSEF BRANDES, IAN DOMOWITZ,
MILAN BORKOVEC, JIAN YANG, ROBERT D. SINCLAIR,
and VITALY SERBIN

———————

Appeal 2018-006345
Application 13/185,929
Technology Center 3600

———————

Before PHILIP J. HOFFMANN, CYNTHIA L. MURPHY, and
AMEE A. SHAH, *Administrative Patent Judges*.

MURPHY, *Administrative Patent Judge*.

DECISION ON APPEAL

The Appellant[1] appeals the final rejection of claims 15–34, 36, and 37
under 35 U.S.C. § 101. We AFFIRM.[2]

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[1] The Appellant is the "applicant" (e.g., "the inventor or all of the joint
inventors") as defined in 37 C.F.R. § 1.42. "[T]he real party in interest is
ITG SOFTWARE SOLUTIONS, INC." (Appeal Br. 2.)

[2] We have jurisdiction over this appeal under 35 U.S.C. § 134 and
35 U.S.C. § 6(b).

BACKGROUND

The Appellant provides a method that "relates to investment portfolio management." (Spec. ¶ 2.)

An investment "portfolio" can be defined as "[a] set of investments and their monetary values," and these investments can each be a "security." (Snyder[3] ¶¶ 65, 66.) It follows, therefore, that a trader (i.e., a person making market trades) would want to know what securities are in an investment portfolio, along with helpful financial information about each security, to facilitate market trades.

A listing of the securities in an investment portfolio, and helpful financial information about each security, can be displayed to a trader "in a spreadsheet format in which a list of securities and associated information are arranged in rows and columns." (Spec. ¶ 36.) For example, each security in the portfolio could have its own row in the spreadsheet and columns could contain helpful financial information about each listed security. (*See id.* ¶ 38, Fig. 3.)

"[T]raders can anticipate price trends from comparison of present trading volume against historical trading volume during similar time intervals." (Bay[4] 6:22–24.) When columns on a spreadsheet contain helpful financial information about each security in an investment portfolio, this helpful financial information could visually convey the result of each security's trading-volume comparison. For example, "volume indicators," indicating the result of this comparison (*id.* at 6:21–22) could be displayed to

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[3] US 2006/0212376 A1, published September 21, 2006.

[4] US 5,347,452, issued September 13, 1994.

a trader so that he/she can "identify[] abnormal variations" in a security's trading volume (*id.* at 1:31–33).

The display of two juxtaposed graphs (correlating a security's current trading volume with the security's historical trading volume) allows a trader to "quickly ascertain if volume is above or below average." (Bay 2:28–30; *see also* Fig. 1.) However, according to the Appellant, the problem with this approach is that, in order for a trader "to know whether an abnormal trading condition exists," the trader "would have to calculate an estimate based on the historic trade volume, calculate the difference of the estimate and the real-time trade volume, and then compare to a threshold for abnormality." (Arguments/Remarks filed June 20, 2012, page 10.)

The Appellant's method solves this problem by having a computer do the estimation, calculation, and comparison that, according to the Appellant, must be done if a trader wants to know whether an abnormal trading condition exits. (*See* Spec. ¶¶ 23, 31.) If the trading-volume comparison reveals "abnormal conditions" for a security (i.e., it exceeds a preselected threshold for abnormality), the computer generates an indicator of abnormality. (*See id.* ¶ 34.) "Any icon" can be "employed as an indicator of abnormal conditions." (*Id.* ¶ 36.) The indicator of abnormality (e.g., an icon) is then received by, and displayed on, the trader's workstation to facilitate market trades. (*See id.* ¶ 35.)

Thus, in a nutshell, the Appellant's method computes helpful financial information, and then provides this helpful financial information to a trader, via a displayed icon, so that he/she can "react quickly to abnormal trading conditions" (Appeal Br. 18), or in other words, make favorable financial decisions.

ILLUSTRATIVE CLAIM
(with bracketed text added)

15. A method of displaying on a graphical user interface of an electronic trading platform workstation, said electronic trading workstation including a computer and a monitor and being coupled with a plurality of electronic trading venues via an electronic data network and configured to, the method comprising:

[(a)] dynamically displaying, on the graphical user interface of the workstation, market data for a plurality of securities, including an indication of a security and an indication of a current value for a first variable of the security;

[(b)] determining, by a first computer server, that the current value for the first variable is abnormally different from a value estimated for the first variable based on historical market data when a difference, determined by the first computer server, between the current value and the estimated value exceeds a preselected threshold for abnormality;

[(c)] receiving, at said workstation from said first computer server, an electronic communication indicating that is abnormally different from the value estimated for the first variable;

[(d)] displaying, in real-time, on the graphical user interface of the workstation, a graphical indicator, generated by the first computer, reflecting that the value for the first variable of the security is abnormal and a magnitude of the abnormality.

REJECTION

Claims 15–34, 36, and 37 stand finally rejected under 35 U.S.C. § 101 as being directed to a judicial exception (i.e., an abstract idea) without significantly more. (Final Action 11.)

JUDICIAL EXCEPTIONS

The Patent Act defines subject matter eligible for patent protection as "any new and useful process, machine, manufacture, or composition of

matter, or any new and useful improvement thereof." (35 U.S.C. § 101.)
Yet the Supreme Court has "long held" that this provision contains an
important implicit exception: "[l]aws of nature, natural phenomena, and
abstract ideas are not patentable." (*Ass'n for Molecular Pathology* v.
Myriad Genetics, Inc., 569 U.S. 576, 589 (2013).) These three concerns are
"judicially created exceptions to § 101," or more concisely, "judicial
exceptions." (*McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299,
1311 (Fed. Cir. 2016).) Thus, an abstract idea is a judicial exception to
subject matter (e.g., a method) that otherwise falls within a category listed in
the statute.

<div align="center">THE ALICE TEST</div>

In *Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208 (2014), the Supreme
Court provided a two-step test to detect when an attempt is being made to
patent an abstract idea in isolation. (*Id.* at 217–18.) In *Alice* step one, a
determination is made as to whether the claim at issue is "directed to" an
abstract idea. (*Id.* at 218.) When doing *Alice* step one, attention can be
given to whether an abstract idea recited in the claim has been integrated
into a practical application. (*See id.* at 217.) While a judicial exception
(e.g., an abstract idea) cannot be patented, "an *application*" of a judicial
exception "to a known structure or process may well be deserving of patent
protection." (*Diamond v. Diehr*, 450 U.S. 175, 187 (1981); *see also Bilski v.
Kappos*, 561 U.S. 593 (2010).)

If the claim at issue is "directed to" an abstract idea, *Alice* step two
must be performed. (*See Alice*, 573 U.S. at 217–18.) In the second step of
the *Alice* test, a determination is made as to whether "additional elements" in
the claim, both individually and as an ordered combination, contribute

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"significantly more" than the abstract idea. (*Id.*) When doing *Alice* step two, attention is given to whether additional elements, and any ordered combination thereof, are "well-understood," "routine," or "conventional." (*Id.* at 225.)

2019 § 101 GUIDANCE

The 2019 Revised Patent Subject Matter Eligibility Guidance ("2019 § 101 Guidance") provides us with specific steps for discerning whether a claim passes the *Alice* test for patent eligibility. (*See* Federal Register Vol. 84, No. 4, 50–57.) These steps are "[i]n accordance with judicial precedent," and consist of a two-pronged Step 2A and a Step 2B. (*Id.* at 52.)

ANALYSIS

The Examiner determines that independent claim 15 is "directed to" an abstract idea involving the display of financial information (Answer 4); and the Examiner determines that additional elements in independent claim 15 do not amount to "significantly more" than this abstract idea (*id.* at 12). More succinctly, the Examiner concludes that claim 15 fails the *Alice* test for patent eligibility.

Prong One of Step 2A

We begin our analysis with the first prong of Step 2A (Prong One) of the Guidance, by determining whether the claim at issue "recites" an abstract idea. (2019 § 101 Guidance, 84 Fed. Reg. 50, 54.) The Guidance "extracts and synthesizes key concepts identified by the courts as abstract ideas," and these concepts include "[c]ertain methods of organizing human activity," and, more particularly, "fundamental economic principles or practices." (*Id.* at 52.) Providing a person with helpful financial information so that he/she

can make favorable financial transactions is a fundamental economic practice. And displaying financial information on a trader's "trading screen" (i.e., the graphical user interface of an electronic trading platform workstation coupled with a plurality of electronic trading venues via an electronic data network) equates to "providing a trader with additional financial information to facilitate market trades." (*Trading Technologies International, Inc. v. IBG LLC*, 921 F.3d 1378, 1384.)

Independent claim 15 sets forth a method comprising steps (a)–(d). (*See* Appeal Br., Claims App.) This method is "[a] method of displaying information on the graphic user interface of an electronic trading platform workstation." (*Id.*) Thus, the claim language itself enunciates that the claimed method provides a trader with information by displaying this information on the trader's trading screen.

More specifically, step (a) recites displaying, on a trader's trading screen, "market data for a plurality of securities, including an indication of a security and an indication of a current value for a first variable of the security." (Appeal Br., Claims App.) Thus, step (a) sets forth that the securities in an investment portfolio can be listed in rows on a spreadsheet, and columns in this spreadsheet can convey current information about each security, such as its current trading volume. And this spreadsheet can be displayed on the trader's trading screen to facilitate market trades.

Step (b) recites determining "that the current value for the first variable is abnormally different from a value estimated for the first variable based on historical market data" when a difference "between the current value and the estimated value exceeds a preselected threshold for abnormality." (Appeal Br., Claims App.) Thus, step (b) sets forth that an

estimation, calculation, and comparison can be done to compute financial information to facilitate market shares, and this financial information can pertain to abnormality in a security's trading volume.

Step (c) recites receiving, on the trader's workstation, "an electronic communication indicating that is abnormally different from the value estimated for the first variable." (Appeal Br., Claims App.) Thus, step (c) sets forth that the trader can receive financial information to facilitate market trades, and that this financial information can convey an abnormality in a security's trading volume.

Step (d) recites displaying, on the trading screen, "a graphical indicator" that "reflect[s] that the value for the first variable of the security is abnormal and a magnitude of the abnormality." (Appeal Br., Claims App.) Thus, step (d) sets forth that a graphical indicator (e.g., an icon) can occupy a column of the displayed spreadsheet. And this icon can convey helpful financial information to the trader about an abnormality in a security's trading volume.

Thus, steps (a)–(d) recite steps performed to display helpful financial information on a trader's trading screen, which equates to providing the trader with additional financial information to facilitate market trades. And providing a trader with helpful financial information so that he/she can make favorable financial transactions is a fundamental economic practice, which is a method of organizing human activity that constitutes an abstract idea. (2019 § 101 Guidance, 84 Fed. Reg. at 52.)

Consequently, under Prong One of Step 2A, independent claim 15 recites an abstract idea; and so we proceed to the second prong of Step 2A.

Prong Two of Step 2A

In the second prong of Step 2A (Prong Two) we evaluate whether the claim contains additional elements that "integrate" the abstract idea "into a practical application." (2019 Guidance, 84 Fed. Reg. at 54.) "Additional elements" are "claim features, limitations, and/or steps that are recited in the claim beyond the identified judicial exception." (*Id.* at 55, n. 24.) As such, an "additional element" in independent claim 15 is a limitation that is beyond the abstract idea of providing a trader with helpful financial information to facilitate market trades.

When an additional element in a claim is a "computer," the relevant question is not whether the claim requires the computer to accomplish a recited function. (*Alice*, 573 U.S. at 223.) Rather, "the relevant question" is whether the claim does more than simply "instruct the practitioner to implement the abstract idea" on a computer. (*Id.* at 225.) The mere recitation of a computer in the claim, and/or words simply saying "apply" the abstract idea "with a computer," will not "transform the abstract idea into a patent-eligible invention." (*Id.* at 223.) In short, the sheer introduction of a computer into the claim is not enough to "impart patent eligibility." (*Id.*)

Independent claim 15 requires the displays in steps (a) and (d) to be on "a graphical user interface of an electronic trading platform workstation," and requires the communication in step (c) to be received at "said workstation." (Appeal Br., Claims App.) This amounts to using a first computer as a display substrate and a destination for information. Thus, claim 15 instructs a practitioner to use a first computer to implement

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displaying and receiving steps innate in the abstract idea of providing a trader with financial information to facilitate market trades.[5]

Independent claim 15 requires a "computer server" to do the determination recited in step (b), to send the communication recited in step (c), and to generate the graphical indicator recited in step (d). This amounts to a computer processing information and sending information to another computer. Thus, claim 15 instructs a practitioner to use a second computer to implement the processing of financial information, and the sending of financial information, to a trader to facilitate market trades.

Independent claim 15 requires the display recited in a step (a) to be "dynamic[]," and the display recited in step (d) to be in "real time." (Appeal Br., Claims App.) This is just another way of saying that, in order for the financial information displayed to the trader to be most helpful, it must be as current as possible, and thus, constantly updated. Thus, claim 15 instructs a practitioner to use a computer as a tool to provide "information to traders in a way that helps them process information more quickly," for the purpose of "improving the trader." (*Trading Technologies (IBG)*, 921 F.3d at 1383.)

Consequently, in claim 15, neither the first computer (i.e., the trader's workstation) nor the second computer (i.e., the server), individually, integrates the abstract idea into a practical application. However, the 2019 § 101 Guidance requires us to also look at claim 15 as a whole in our

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[5] Independent claim 15 recites, in its preamble, that the trader's workstation is "coupled with a plurality of electronic trading venues via an electronic data network." (Appeal Br., Claims App.) This would seem to be true of any computing device having a "trading screen" which a trader uses to facilitate market trades. (*See Trading Technologies (IBG)*, 921 F.3d at 1381.)

evaluation of whether this abstract idea has been integrated into a practical application. (*See* 2019 § 101 Guidance, 84 Fed. Reg. at 54.) Even when additional elements are not enough on their own to meaningfully limit an exception, the claimed combination of these additional elements may still provide the practical application. (*See id.*)[6]

Here, however, the claimed combination consists of the first computer (the trader's workstation) "receiving" and "displaying" financial information "from" the second computer, namely a graphic indicator. (Appeal Br., Claims App.) This nonspecific coordination between the first and second computer is not enough to integrate the recited abstract idea (i.e., providing a trader with helpful financial information to facilitate market trades) into a practical application. Put another way, claim 15 instructs a practitioner to use computers "to do what computers do." (Answer 14.)[7]

Consequently, under Prong Two of Step 2A, additional elements in independent claim 15 do not integrate the recited abstract idea into a practical application. Thus, claim 15 is "directed to" the abstract idea of providing a trader with financial information to facilitate market trades, and so we proceed to Step 2B of the Guidance.

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[6] In *Bascom Global Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016), the Federal Circuit expressly held that it is sometimes possible for "an inventive concept" to reside in "the non-conventional and non-generic arrangement of known, conventional pieces," such as "a set of generic computer components." (*Bascom*, 827 F. 3d at 1350.)

[7] "Given the ubiquity of computers, wholly generic computer implementation is not generally the sort of 'additional featur[e]' that provides any 'practical assurance that the process is more than a drafting effort designed to monopolize the [abstract idea] itself.'" (*Alice,* 573 U.S. at 223–24 (citations omitted).) "Nearly every computer" will include hardware capable of preforming "transmission functions." (*Id*. at 226.)

Step 2B

In Step 2B, we evaluate whether "additional elements recited in the claim[] provide[] 'significantly more' than the recited judicial exception." (2019 Guidance, 84 Fed. Reg. at 56.) More particularly, we evaluate whether these additional elements "add[] a specific limitation or combination of limitations that are not well-understood, routine, conventional activity." (*Id.*) If a claim is directed to an abstract idea, a conventional arrangement of conventional computer components performing conventional computer functions will not amount to "significantly more" than this abstract idea, and the claim will fail the *Alice* test for patent eligibility. (*See Alice*, 573 U.S. at 225.)

As discussed above, the additional elements in independent claim 15 are a first computer (the trader's workstation) and a second computer that processes and sends information for display on the first computer. The Specification describes these additional elements as conventional computer components that are arranged in a conventional manner to perform conventional computer functions. (*See* Spec. ¶¶ 20–22, Fig. 1.)

Consequently, additional elements in independent claim 15 do not add "significantly more" to the abstract idea of providing a trader with helpful financial information to facilitate market trades; and claim 15 fails the *Alice* test for patent eligibility.

The Appellant's Arguments

The Appellant argues that claim 15 is "just like" the claims under review in *Trading Technologies Int.'l, Inc. v. CQG, Inc.*, 675 Fed. Appx. 1001 (Fed. Cir. 2017). (Appeal Br. 22.) We note that, in this non-precedential case, the Federal Circuit's holding did not hinge upon the

discovery that the claimed financial information could be helpful to a trader to facilitate market trades; but rather on software improvements that "prevent[ed] order entry at a changed price." (*Trading Technologies (CQG)*, 675 Fed. Appx. at 1003.) Tellingly, claim 15 does not require any interaction between the trader and the financial information displayed on his/her trading screen.[8]

Moreover, the Federal Circuit later clarified, in a precedential case, that "providing a trader with new or different information in an existing trading screen is not a technical solution to a technical problem." (*Trading Technologies (IBG)*, 921 F.3d at 1383.) In this precedential case, the Federal Circuit explained that the claimed method, which "display[ed] an indicator representing market information" on a graphical user interface, did "not improve the functioning of the computer, make it operate more efficiently, or solve any technological problem." (*Id.* at 1385.) The Federal Circuit said that, insofar as the display of the claimed indicator (representing financial information) was an "improvement," it "improve[d] the trader, not the functioning of [a] computer." (*Id.* at 1383.)

The Appellant argues that independent claim 15 claims a method that must be practiced "in the realm of a computerized electronic trading." (Appeal Br. 22.) This might be true, as the method involves the display of

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[8] Dependent claim 22 (not separately argued) recites "automatically executing a trade based on determining that the difference between the current value for the first variable and the estimated value exceeds a preselected threshold for abnormality." (Appeal Br., Claims App.) However, this claim does not require, and the Specification does not describe, any pairing between this automatic execution and the financial information displayed on the trader's trading screen.

helpful financial information on an "electronic trading workstation" which is "coupled with a plurality of electronic trading venues via an electronic data network." (*Id.*, Claims App.) However, the flaw in this argument is that a fundamental economic practice does not become non-abstract by limiting its practice to an electronic environment.[9] And the electronic-trading world is no stranger to abstract ideas. (*See Trading Technologies (IBG)*, 921 F.3d at 1384.)

The Appellant argues that computerized electronic trading requires a "specific configuration of computers" that is "technologically advanced." (Appeal Br. 22.) There seems to be no dispute that an electronic trading platform is undergirded by a sophisticated configuration of computers. But the Appellant is not trying to cure a technical shortcoming of this undergirding. Rather, the Appellant acknowledges that the "solution" provided by the claimed method is displaying a graphical indicator on a trader's trading screen "which allows the trader to react quickly to abnormal trading conditions." (Appeal Br. 18.) And the Appellant does not contend that it was necessary to invent new computer technology to make the display of this graphical indicator possible.[10]

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[9] For example, limiting price optimization to an "e-commerce setting" does not make this fundamental economic practice "any less abstract" (*OIP Technologies, Inc. v Amazon.com, Inc.* 788 F.3d 1359, 1362–63 (Fed. Cir. 2015); and limiting guarantees to "online transactions" is "insufficient" to save a claim from abstractness (*buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1365 (Fed. Cir. 2104)).

[10] The Appellant implies that independent claim 15 requires a "central server" that is connected to "historical data services a plurality of client workstations executing a graphic user interface." (Appeal Br. 22.) This is not entirely accurate. Claim 15 requires a "computer server" to determine the difference between a current value and an "estimated" value "based on

The Appellant argues that independent claim 15 requires a real-time display of the graphic indicator, and that this real-time feedback is something that a human could not do without a computer. (*See* Appeal Br. 15.) Indeed, it is usually difficult, if not impossible, for a human to provide informational feedback at the same speed as a computer. But using a computer to perform a task "more quickly or more accurately" is not a ticket into patent-eligible territory. (*OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015).)

The Appellant argues that "to the extent the claims are implemented through the use of computers, there is no evidence that the claimed functions are the same as that previously used by manual human traders." (Appeal Br. 18.) We are aware of no controlling case law requiring such evidence in the context of a fundamental economic practice. Before the Appellant's invention, traders may not have been looking at the particular financial information recited in claim 15, and they may not have been doing the calculations leading thereto. But this just means that the Appellant appreciated (perhaps before anyone else) that this particular financial information would be helpful information to a trader. If so, the Appellant improves a fundamental economic practice (i.e., providing a person with helpful financial information so that he/she can make favorable financial transactions) by providing some financial information that was not previously provided.

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historical market data." (*Id.*, Claims App.) Claim 15 does not require the computer server to have access to (or even know about) historical market data. And, although claim 15 requires the workstation to "receiv[e]" a communication from the computer server, it does not specify a specific communication configuration therebetween.

The Appellant argues that, per the Federal Circuit's holding in *McRO*, a claim is not "directed to" an abstract idea if it has "rules" embodied in computer software, even when those rules are processed by a general purpose computer. (*See* Appeal Br. 15–17.) However, there are no "rules" whatsoever recited in independent claim 15. Moreover, even the recitation of sophisticated rules for fulfilling a fundamental economic practice (as opposed to a non-abstract endeavor such as automated animation) might not disqualify a claim from being directed to an abstract idea.

The Appellant argues that "there are no prior art rejections at all, and thus there is no evidence that the claims are not new and nonobvious." (Appeal Br. 18.) The Appellant seems to be saying that if a claim recites an abstract idea that has not yet been disclosed in the prior art, this undisclosed abstract idea is patent eligible. But a "new" abstract idea (even a "brilliant" abstract idea) "does not by itself satisfy the § 101 inquiry." (*Myriad,* 569 U.S. at 591.) As mentioned above, the Appellant may very well have been the first to realize that the display of the claimed financial information improved a fundamental economic practice, but this improved fundamental economic practice is nonetheless an abstract idea.

Thus we agree with the Examiner that independent claim 15 recites a judicial exception without significantly more.

The Appellant's Declaration

A Declaration by Milan Borkovec, dated December 17, 2015 ("Declaration"), was filed to produce "additional evidence of patentability in the record." (*See* Appeal Br. 9.) The Appellant contends, correctly, that an examiner's outright refusal to consider such a declaration could constitute reversible error. (*See id.* at 13.) Here, however, the record plainly shows

that the Examiner fully considered the factual assertions made in the Declaration when doing the *Alice* test for patent eligibility. (*See* Final Action 4–6; Answer 6–9.)

The Appellant's foremost frustration appears to be the Examiner's unwillingness to do a wholesale adoption of the Declarant's opinion that the claimed method does not satisfy *Alice* step one. (*See* Appeal Br. 14–15.) In the Declarant's opinion, the claimed method is "in no way abstract" (Declaration ¶ 8E), "directed to a technical solution" (*id.* ¶ 7; *see also* ¶¶ 8E, 8F, 9, 10), and "rooted in computer technology" (*id.* ¶ 10).

The final determination of whether a claim satisfies *Alice* step one is a legal determination we make in light of the Specification, the actual claim language, controlling case law, and, sometimes, underlying facts. Here, as in most appeals, the Appellant's opinion differs from that of the Examiner as to what conclusion we should reach on a matter of law. But an appellant restating its opinion on a matter of law in a declaration does not convert this opinion into evidence.

The Declaration does include factual assertions describing how electronic trading "changed the entire paradigm for trading" (Declaration ¶ 8D; *see also* ¶¶ 8A–8C, 8G), the inability of a human to put "indicators on a display for traders to be used in any meaningful way" (*id.* ¶ 8I), and how the "implementation of a trading strategy is no trivial task and the technology for doing so is very complicated and advanced" (*id.* ¶ 8D). These factual assertions should be taken into consideration when doing the *Alice* test for patent eligibility, and the record reflects that the Examiner has done so. (*See* Final Action 4–6; Answer 6–9.)

The trouble is that these factual assertions in the Declaration (which we can assume for the purposes of this appeal are entirely true) do not tilt the *Alice* scale towards patent eligibility. These factual assertions establish, at best, that the recited fundamental economic practice is practiced in a particular electronic environment, and that a computer can perform a task implementing this fundamental economic practice more efficiently than a human. As discussed above, these facts do not lift a fundamental economic beyond an abstract idea. Although the claimed invention may "sit[] inside" a complicated market structure (Declaration ¶ 8E), the Appellant is not trying to cure a technical shortcoming of the complicated technology that ungirds the electronic-trading market.

Thus, we agree with the Examiner that the factual assertions made in the Declaration do not sway the outcome of the *Alice* test one way or the other.

Summary

After careful consideration of the Appellant's arguments and Declaration, we are not convinced that the Examiner wrongly concludes that independent claim 15 does not pass muster under 35 U.S.C. § 101. The claims on appeal are argued as group (*see* Appeal Br. 11–14), and so claims 16–34, 36, and 37 fall with independent claim 15.[11]

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[11] "When multiple claims subject to the same ground of rejection are argued as a group or subgroup by appellant, the Board may select a single claim from the group or subgroup and may decide the appeal as to the ground of rejection with respect to the group or subgroup on the basis of the selected claim alone." (37 C.F.R. § 41.37(c)(1)(iv).)

CONCLUSION

Claims Rejected	Basis	Affirmed	Reversed
15–34, 36, 37	§ 101 – subject matter eligibility	15–34, 36, 37	

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).

AFFIRMED