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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* ALEXANDER K. KOCOVES and JAMES M. POLLACK

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Appeal 2018-006767  
Application 14/623,658  
Technology Center 3600

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Before KARA L. SZPONDOWSKI, SCOTT B. HOWARD, and  
STEVEN M. AMUNDSON, *Administrative Patent Judges*.

AMUNDSON, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant<sup>1</sup> seeks our review under 35 U.S.C. § 134(a) from a final rejection of claims 1–20, i.e., all pending claims. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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<sup>1</sup> We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as GLP & Associates, Inc. Appeal Br. 2.

## STATEMENT OF THE CASE

### *The Invention*

According to the Specification, the invention “relates to investment services and, more particularly, to techniques for . . . analyzing performance of investment service sales.” Spec. ¶ 2.<sup>2</sup> The Specification explains that the invention endeavors to determine “one or more performance metrics for” salespersons based on “investment service presentation information” and “investment service sales information” associated with the respective salespersons. *Id.* ¶ 7; *see id.* ¶¶ 60–61, Fig. 6. The term “investment service presentation information” includes “number of presentations, time per presentation, etc.” *Id.* ¶ 27. The term “investment service sales information” includes “number of investment services sold, amount of money invested, etc.” *Id.* The Specification also explains that the invention “can include ranking . . . the salespersons.” *Id.* ¶ 7; *see id.* ¶ 60.

### *Exemplary Claim*

Independent claim 1 exemplifies the claims at issue and reads as follows (with formatting added for clarity):

1. A method for aggregating and analyzing investment service sales data, the method comprising:

receiving, from one or more computing devices over a distributed computing network via a communication device of a server computer having one or more processors, investment service presentation information and investment service sales information associated with a plurality of salespersons,

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<sup>2</sup> This decision uses the following abbreviations: “Spec.” for the Specification, filed February 17, 2015; “Final Act.” for the Final Office Action, mailed November 14, 2017; “Appeal Br.” for the Appeal Brief, filed March 28, 2018; “Ans.” for the Examiner’s Answer, June 15, 2018; and “Reply Br.” for the Reply Brief, filed June 20, 2018.

the investment service presentation information including respective advertisement, referral, and/or marketing of investment services data for each of the salespersons to prospective enrollees in a defined contribution plan, and

the investment service sales information including respective total number of sales of investment services data for each of the salespersons to the prospective enrollees;

storing, via a memory device of the server computer, the received investment service presentation information and investment service sales information;

determining, via the server computer, one or more performance metrics for one of the salespersons based on the respective investment service presentation information and the respective investment service sales information associated with the salesperson;

analyzing, via the server computer, each of the one or more performance metrics for the salesperson with respect to one or more other ones of the salespersons, the one or more other salespersons being part of a same entity as the salesperson or another entity associated with the entity of the salesperson;

generating, via the server computer based on the analyzed one or more performance metrics, performance comparison data for the salesperson and the one or more other salespersons and/or the entity of the salesperson and any other entities associated with the entity of the salesperson; and

generating, via the server computer based on the performance comparison data, rankings data transmitted to the one or more computing devices.

Appeal Br. A1 (Claims App.).

*The Rejection on Appeal*

Claims 1–20 stand rejected under 35 U.S.C. § 101 as directed to patent-ineligible subject matter. Final Act. 6–14.

## ANALYSIS

We have reviewed the rejection in light of Appellant’s arguments that the Examiner erred. For the reasons explained below, we agree with the Examiner’s conclusion concerning ineligibility under § 101. We adopt the Examiner’s findings and reasoning regarding the § 101 rejection in the Final Office Action and Answer. *See* Final Act. 3–14; Ans. 3–10. We provide the following to address and emphasize specific findings and arguments.

### *Introduction*

The Patent Act defines patent-eligible subject matter broadly: “Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.” 35 U.S.C. § 101. In *Mayo* and *Alice*, the Supreme Court explained that § 101 “contains an important implicit exception” for laws of nature, natural phenomena, and abstract ideas. *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 70 (2012); *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014); *see Diamond v. Diehr*, 450 U.S. 175, 185 (1981). In *Mayo* and *Alice*, the Court set forth a two-step analytical framework for evaluating patent-eligible subject matter. *Mayo*, 566 U.S. at 77–80; *Alice*, 573 U.S. at 217–18.

Under *Mayo/Alice* step one, we “determine whether the claims at issue are directed to” a judicial exception, i.e., an abstract idea, a law of nature, or a natural phenomenon. *Alice*, 573 U.S. at 217. Step one involves looking at the “focus” of the claims at issue and their “character as a whole.” *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1167 (Fed. Cir. 2018).

In January 2019, the PTO issued revised guidance for determining whether claims are directed to a judicial exception. *See 2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019) (“2019 Guidance”). The 2019 Guidance applies to the Board. *Id.* at 50–51, 57 n.42; *see* 35 U.S.C. § 3(a)(2)(A) (investing the Director with responsibility “for providing policy direction” for the PTO). Neither the Examiner nor Appellant had the benefit of the 2019 Guidance when presenting their respective positions concerning subject-matter eligibility.

The 2019 Guidance specifies two prongs for the analysis under *Mayo/Alice* step one (PTO step 2A). 84 Fed. Reg. at 54–55. Prong one requires evaluating “whether the claim recites a judicial exception, *i.e.*, an abstract idea, a law of nature, or a natural phenomenon.” *Id.* at 54. “If the claim does not recite a judicial exception, it is not directed to a judicial exception,” and it satisfies § 101. *Id.* “If the claim does recite a judicial exception, then it requires further analysis” under prong two. *Id.* Prong two requires evaluating “whether the claim as a whole integrates the recited judicial exception into a practical application of the exception.” *Id.* “When the exception is so integrated, then the claim is not directed to a judicial exception,” and it satisfies § 101. *Id.* “If the additional elements do not integrate the exception into a practical application, then the claim is directed to the judicial exception,” and it “requires further analysis” under *Mayo/Alice* step two (PTO step 2B). *Id.*

Under *Mayo/Alice* step two, we “consider the elements of each claim both individually and ‘as an ordered combination’ to determine whether the additional elements” add enough to transform the “nature of the claim” into “significantly more” than the judicial exception. *Alice*, 573 U.S. at 217–18,

221–22 (quoting *Mayo*, 566 U.S. at 78–79). Step two involves the search for an “inventive concept.” *Alice*, 573 U.S. at 217–18, 221; *Univ. of Fla. Research Found., Inc. v. Gen. Elec. Co.*, 916 F.3d 1363, 1366 (Fed. Cir. 2019). “[A]n inventive concept must be evident in the claims.” *RecogniCorp, LLC v. Nintendo Co.*, 855 F.3d 1322, 1327 (Fed. Cir. 2017).

*Mayo/Alice Step One: PTO Step 2A Prong One*

For *Mayo/Alice* step one, the Federal Circuit has noted that “[a]n abstract idea can generally be described at different levels of abstraction.” *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1240 (Fed. Cir. 2016). Here, the Examiner determines that the claims are directed to the abstract idea of “[m]anaging and analyzing performance of investment service sales data.” Final Act. 8, 12–14. The Examiner explains that the claims encompass “processes of comparing data or organizing information that can be performed mentally.” *Id.* at 9. The Examiner identifies the following processes: “receiving information, storing received information (collecting information), determining information, analyzing information (analyzing information), generating and transmitting information (displaying results and analysis).” *Id.* The Examiner reasons that the claims resemble the patent-ineligible claims in *Electric Power* directed to “collecting information, analyzing it, and displaying certain results of the collection and analysis.” *Id.* (citing *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016)).

Appellant disputes that independent claims 1 and 8 are directed to an abstract idea. *See* Appeal Br. 11–15; Reply Br. 1–3, 7–8. Appellant argues that the Examiner “read[s] out almost every distinguishable limitation” of

the “independent claims to reach the conclusion that these claims are directed to” an abstract idea. Appeal Br. 11; *see* Reply Br. 7.

We disagree. In determining that the claims are directed to an abstract idea, the Examiner accurately assesses the “focus” of the claims and their “character as a whole.” *See* Final Act. 9; *see also* *SAP Am.*, 898 F.3d at 1167.

In addition, we determine that the claims recite abstract ideas falling within one of the three groupings of abstract ideas specified in the 2019 Guidance, i.e., “mental processes.” *See* 84 Fed. Reg. at 51–52. The 2019 Guidance describes “mental processes” as “concepts performed in the human mind,” such as “an observation, evaluation, judgment, [or] opinion.” *Id.* at 52 (footnote omitted). As explained below, each independent claim recites “mental processes” in various limitations.

For instance, claim 1 recites the following limitations:

- “determining . . . one or more performance metrics for one of the salespersons based on the respective investment service presentation information and the respective investment service sales information associated with the salesperson”;
- “analyzing . . . each of the one or more performance metrics for the salesperson with respect to one or more other ones of the salespersons, the one or more other salespersons being part of a same entity as the salesperson or another entity associated with the entity of the salesperson”;
- “generating . . . based on the analyzed one or more performance metrics, performance comparison data for the salesperson and the one or more other salespersons and/or the entity of the salesperson and any other entities associated with the entity of the salesperson”; and

- “generating . . . based on the performance comparison data, rankings data . . . .”

Appeal Br. A1. Claim 8 recites similar limitations. *Id.* at A2–A3.

The above-identified limitations encompass evaluations practically performed by a human mentally or with pen and paper. For example, the presentation information could include the number of presentations on a particular day, and the sales information could include the number of sales on that particular day. *See Spec.* ¶¶ 27, 60, Fig. 6. Someone could review the daily presentation information and the daily sales information for two individuals, e.g., salesperson A and salesperson B. After reviewing the daily information, someone could mentally determine performance metrics, e.g., higher number of presentations and higher number of sales, for salesperson A and salesperson B. Moreover, someone could mentally compare the reviewed information for salesperson A and salesperson B and mentally discern how they compared to each other. Based on that mental comparison, someone could mentally rank salesperson A and salesperson B, e.g., salesperson A had a higher number of presentations or salesperson B higher number of sales.

For these reasons, the above-identified limitations encompass evaluations practically performed by a human mentally or with pen and paper. The 2019 Guidance identifies an evaluation practically performed by a human mentally or with pen and paper as a mental process, and thus an abstract idea. 84 Fed. Reg. at 52 & nn.14–15; *see also Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1318 (Fed. Cir. 2016) (“*Symantec*”) (“[W]ith the exception of generic computer-implemented

steps, there is nothing in the claims themselves that foreclose them from being performed by a human, mentally or with pen and paper.”).

*Mayo/Alice Step One: PTO Step 2A Prong Two*

Because we determine that each independent claim recites abstract ideas, we consider whether each claim as a whole integrates the recited abstract ideas into a practical application. *See* 84 Fed. Reg. at 54–55. “Only when a claim recites a judicial exception and fails to integrate the exception into a practical application, is the claim ‘directed to’ a judicial exception . . . .” *Id.* at 51.

As additional elements, the independent claims recite computer-system components. Appeal Br. A1–A3. Specifically, method claim 1 recites (1) a “server” with a “communication device,” a “memory device,” and “one or more processors”; (2) a “distributed computing network”; and (3) “one or more computing devices.” *Id.* at A1. Similarly, system claim 8 recites (1) a “server” with “one or more processors”; (2) a “distributed computing network”; (3) a “communication device”; and (4) a “memory device.” *Id.* at A2–A3.

The independent claims also recite data-collecting limitations. *Id.* at A1–A3. For instance, claim 1 recites the following data-collecting limitations:

- “receiving . . . investment service presentation information and investment service sales information associated with a plurality of salespersons, the investment service presentation information including respective advertisement, referral, and/or marketing of investment services data for each of the salespersons to prospective enrollees in a defined contribution plan, and the investment service sales information including respective total number of sales of investment services

data for each of the salespersons to the prospective enrollees”; and

- “storing . . . the received investment service presentation information and investment service sales information.”

Appeal Br. A1. Claim 8 recites similar data-collecting limitations. *Id.* at A2–A3.

We determine that each independent claim as a whole does not integrate the recited abstract ideas into a practical application because the additional elements do not impose meaningful limits on the abstract ideas. *See* 84 Fed. Reg. at 53–54; *see also* Final Act. 9–12; Ans. 4, 8. The claimed computer-system components constitute generic computer-system components that perform generic computer functions. *See* Final Act. 9, 11–12 (citing Spec. ¶¶ 20, 67–69, 71–73); Ans. 8; *see also* Spec. ¶¶ 20, 22–23, 67–69, 71–73. Further, the data-collecting limitations constitute insignificant extra-solution activity. *See, e.g., Mayo*, 566 U.S. at 79; *Bilski v. Kappos*, 561 U.S. 593, 611–12 (2010); *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363–64 (Fed. Cir. 2015); *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 716 (Fed. Cir. 2014); *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1370 (Fed. Cir. 2011); *In re Grams*, 888 F.2d 835, 839–40 (Fed. Cir. 1989).

As an example of insignificant extra-solution activity, in *Mayo* the Supreme Court decided that measuring metabolite levels for later analysis constituted purely “conventional or obvious” pre-solution activity. *Mayo*, 566 U.S. at 79. Similarly, the Federal Circuit has held that mere data-gathering steps “cannot make an otherwise nonstatutory claim statutory.” *CyberSource*, 654 F.3d at 1370 (quoting *Grams*, 888 F.2d at 840). The Federal Circuit has also held that (1) presenting offers to potential customers

and (2) gathering statistics concerning customer responses were “conventional data-gathering activities that d[id] not make the claims patent eligible.” *OIP Techs.*, 788 F.3d at 1363–64. Consistent with those decisions, the Manual of Patent Examining Procedure (“MPEP”) identifies “gathering data” as an example of insignificant pre-solution activity. MPEP § 2106.05(g) (9th ed. rev. 08.2017 Jan. 2018).

Here, the data-collecting limitations amount to mere data-gathering steps and require nothing unconventional or significant. *See Classen Immunotherapies, Inc. v. Biogen IDEC*, 659 F.3d 1057, 1067 (Fed. Cir. 2011) (analogizing “data gathering” to “insignificant extra-solution activity”). For example, the Specification broadly provides that “the server 104 can receive investment service presentation and sales information associated with the salesperson 116” from some unspecified source or sources. Spec. ¶ 27. Hence, the data-collecting limitations do not help integrate the recited abstract ideas into a practical application.

Appellant contends that the claims “are drawn to a limited technique for generating, aggregating, analyzing and applying a specific type of data, which offers a quantifiable improvement over existing techniques.” Appeal Br. 11; *see id.* at 15. Specifically, Appellant asserts that the claims implement “a specific solution for gauging the competence and efficacy of such agents/salespersons in presenting and providing” investment services and focus “on narrow techniques in a limited field of application” to achieve “a particular outcome.” Appeal Br. 13–14; *see* Reply Br. 6–7.

Appellant’s arguments do not persuade us of Examiner error. “[L]imiting an abstract idea to one field of use” does not impart patent eligibility. *See Bilski*, 561 U.S. at 612; *see also Parker v. Flook*, 437 U.S.

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584, 589–90 (1978); *SAP Am.*, 898 F.3d at 1169; *Affinity Labs of Tex., LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1259 (Fed. Cir. 2016) (“*DIRECTV*”).

A “claim is not patent eligible merely because it applies an abstract idea in a narrow way.” *BSG Tech LLC v. BuySeasons, Inc.*, 899 F.3d 1281, 1287 (Fed. Cir. 2018).

Appellant contends that the claimed “systems and methods are able to quickly and readily automate the production of performance comparison data and rankings data for the salespersons.” Reply Br. 4; *see id.* at 7. According to Appellant, that effort “historically requir[ed] an exorbitant number of man hours to produce and collect relevant data, and oftentimes rel[ied] on subjective, inconsistent metrics for evaluating performance.” Appeal Br. 13.

“But relying on a computer to perform routine tasks more quickly or more accurately is insufficient to render a claim patent eligible.” *OIP Techs.*, 788 F.3d at 1363. Moreover, the “mere automation of manual processes using generic computers does not constitute a patentable improvement in computer technology.” *Credit Acceptance Corp. v. Westlake Servs.*, 859 F.3d 1044, 1055 (Fed. Cir. 2017). Further, the Examiner correctly finds that the claims do not improve the “functioning of the computer itself” or “another technology or technical field.” Final Act. 13; *see Ans.* 4, 7–8.

Appellant analogizes the claims here to the claims in the following cases: *Core Wireless Licensing S.A.R.L. v. LG Electronics, Inc.*, 880 F.3d 1356 (Fed. Cir. 2018); *Thales Visionix Inc. v. United States*, 850 F.3d 1343 (Fed. Cir. 2017); *McRO, Inc. v. Bandai Namco Games America Inc.*, 837 F.3d 1299 (Fed. Cir. 2016); *BASCOM Global Internet Services, Inc. v.*

*AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016); *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016); *Visual Memory LLC v. NVIDIA Corp.*, 867 F.3d 1253 (Fed. Cir. 2017); *Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288 (Fed. Cir. 2016); and *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014). *See, e.g.*, Appeal Br. 7–9, 12–16; Reply Br. 3–5. But the claims here do not resemble the claims in any of those cases.

In *Core Wireless*, the “claims recite[d] a specific improvement over prior systems,” i.e., a “particular manner of summarizing and presenting information in electronic devices.” *Core Wireless*, 880 F.3d at 1362–63. The Federal Circuit decided that the claims satisfied § 101 under *Mayo/Alice* step one because the “invention improve[d] the efficiency of using the electronic device.” *Id.* at 1363.

Unlike the claims in *Core Wireless*, the claims here do not improve the efficiency of using a computer or another device. As discussed above, the Examiner correctly finds that the claims do not improve the “functioning of the computer itself” or “another technology or technical field.” Final Act. 13; *see* Ans. 4, 7–8. As also discussed above, the claims use generic computer-system components to automate manual processes, i.e., processes that “historically requir[ed] an exorbitant number of man hours to produce and collect relevant data.” *See* Appeal Br. 13; Reply Br. 4. Here, “the purported advance ‘is a process of gathering and analyzing information of a specified content, . . . and not any particular assertedly inventive technology for performing those functions.’” *Trading Techs. Int’l, Inc. v. IBG LLC*, 921 F.3d 1378, 1385 (Fed. Cir. 2019) (quoting *Elec. Power*, 830 F.3d at 1354).

In *Thales*, the patent at issue disclosed “an inertial tracking system for tracking the motion of an object relative to a moving reference frame.” *Thales*, 850 F.3d at 1344. Each independent claim required two inertial sensors, i.e., one sensor mounted on the object and another sensor mounted on the moving reference frame. *Id.* at 1345–46, 1348. The claimed inertial sensors supplied signals for determining the object’s orientation relative to the moving reference frame. *Id.* at 1345–46, 1348. The Federal Circuit decided that the claims satisfied § 101 under *Mayo/Alice* step one because they were directed to using “inertial sensors in a non-conventional manner to reduce errors in measuring the relative position and orientation of a moving object on a moving reference frame.” *Id.* at 1348–49.

Unlike the claims in *Thales*, the claims here do not specify a non-conventional manner for arranging conventional components. Appeal Br. A1–A3; *see* Final Act. 5, 11, 13; Ans. 4, 7–8.

In *McRO*, the claims recited a “specific . . . improvement in computer animation” using “unconventional rules” that related “sub-sequences of phonemes, timings, and morph weight sets” to automatically animate lip synchronization and facial expressions for three-dimensional characters that only human animators could previously produce. *McRO*, 837 F.3d at 1302–03, 1307–08, 1313–15. The Federal Circuit reasoned that “the incorporation of the claimed rules” improved an existing technological process. *Id.* at 1314.

Similarly, in *BASCOM*, the claims recited a “specific method of filtering Internet content” requiring “the installation of a filtering tool at a specific location, remote from the end-users, with customizable filtering features specific to each end user.” *BASCOM*, 827 F.3d at 1345–46, 1350.

The Federal Circuit reasoned that the claims covered “a technology-based solution . . . to filter content on the Internet that overcomes existing problems with other Internet filtering systems” and “improve[s] an existing technological process.” *Id.* at 1351 (citing *Alice*, 573 U.S. at 223); *see Alice*, 573 U.S. at 223 (explaining that “the claims in *Diehr* were patent eligible because they improved an existing technological process”).

Unlike the claims in *McRO* and *BASCOM*, the claims here do not cover a technology-based solution that improves an existing technological process. As discussed above, the Examiner correctly finds that the claims do not improve the “functioning of the computer itself” or “another technology or technical field.” Final Act. 13; *see* Ans. 4, 7–8. As the Examiner explains, the claims recite “a general server computer with a system memory connected to the Internet” that performs conventional data-processing steps, e.g., “aggregating” and “analyzing” information. Ans. 4, 7–8. As the Examiner also explains, the “claims do not lay out a particular set of rules for using a computer server with a system memory connected to the Internet” when “aggregating” and “analyzing” information. *Id.* at 7.

In *Enfish*, the Federal Circuit decided that the claims satisfied § 101 under *Mayo/Alice* step one because they recited a “specific improvement to the way computers operate,” i.e., an improved database configuration that permitted faster and more efficient searching. *Enfish*, 822 F.3d at 1330–33, 1336, 1339. Further, the Federal Circuit has explained that the claims in *Enfish* “did more than allow computers to perform familiar tasks with greater speed and efficiency” and “actually permitted users to launch and construct databases in a new way.” *Finjan, Inc. v. Blue Coat Sys., Inc.*, 879 F.3d 1299, 1305 (Fed. Cir. 2018); *see Secured Mail Sols. LLC v.*

*Universal Wilde, Inc.*, 873 F.3d 905, 910 (Fed. Cir. 2017) (explaining that the claims in *Enfish* “focused on an improvement to computer functionality itself”).

Similarly, in *Visual Memory*, the Federal Circuit decided that the claims satisfied § 101 under *Mayo/Alice* step one because they were “directed to an improved computer memory system” that “enabl[ed] interoperability with multiple different processors” and “obviate[d] the need to design a separate memory system for each [different] type of processor.” *Visual Memory*, 867 F.3d at 1259–60, 1262.

Unlike the claims in *Enfish* and *Visual Memory*, the claims here do not recite an improvement to computer functionality. *See* Final Act. 13; Ans. 4, 7. For instance, the claims do not recite an advance in hardware or software that causes a memory itself or a processor itself to operate faster or more efficiently. As the Examiner properly reasons, the claims “do not improve a database structure” or “provide a memory system solution or improvement.” Ans. 4. Further, the claims employ generic computer-system components, e.g., “one or more computing devices,” in their ordinary capacities to collect, manipulate, and communicate data. *See* Appeal Br. A1–A3; Spec. ¶¶ 20, 22–23, 67–69, 71–73; *see also Alice*, 573 U.S. at 226.

In *Amdocs*, the patents concerned network components “arrayed in a distributed architecture” that “collect[ed] and process[ed] data close to its source,” and thus enabled “load distribution” and reduced network congestion. *Amdocs*, 841 F.3d at 1291–92, 1300, 1303, 1306. The Federal Circuit decided that the claims satisfied § 101 under *Mayo/Alice* step two because they either (1) “entail[ed] an unconventional technological solution . . . to a technological problem” that required generic computer components

to “operate in an unconventional manner to achieve an improvement in computer functionality” or (2) “recite[d] a technological solution to a technological problem specific to computer networks—an unconventional solution that was an improvement over the prior art.” *Id.* at 1299–1306.

Unlike the claims in *Amdocs*, the claims here do not require generic computer components to “operate in an unconventional manner to achieve an improvement in computer functionality.” For instance, the claims do not require an unconventional arrangement of components or an uncommon network configuration. As the Examiner properly reasons, the claims “merely use[] the existing Internet” and “its advantages,” such as “[e]fficient communication” and “distribution of data,” in a “conventional and predictable way.” Final Act. 5, 11, 13.

In *DDR Holdings*, the Federal Circuit determined that certain claims satisfied § 101 under *Mayo/Alice* step two because “the claimed solution amount[ed] to an inventive concept for resolving [a] particular Internet-centric problem,” i.e., a challenge unique to the Internet. *DDR Holdings*, 773 F.3d at 1257–59; see *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (Fed. Cir. 2016) (noting that “[i]n *DDR Holdings*, we held that claims ‘directed to systems and methods of generating a composite web page that combines certain visual elements of a “host” website with content of a third-party merchant’ contained the requisite inventive concept”). The Federal Circuit explained that the patent-eligible claims specified “how interactions with the Internet are manipulated to yield a desired result . . . that overrides the routine and conventional sequence of events ordinarily triggered by the click of a hyperlink.” *DDR Holdings*, 773 F.3d at 1258. The court reasoned that those claims recited a technological solution

“necessarily rooted in computer technology” that addressed a “problem specifically arising in the realm of computer networks.” *Id.* at 1257.

According to the Federal Circuit, “*DDR Holdings* does not apply when . . . the asserted claims do not ‘attempt to solve a challenge particular to the Internet.’” *Smart Sys. Innovations, LLC v. Chi. Transit Auth.*, 873 F.3d 1364, 1375 (Fed. Cir. 2017) (quoting *In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d 607, 613 (Fed. Cir. 2016)). Unlike the patent-eligible claims in *DDR Holdings*, the claims here do not attempt to solve a challenge particular to the Internet. *See* Appeal Br. A1–A3; *see also* Final Act. 5, 11, 13; Ans. 4, 7–8.

The 2019 Guidance identifies exemplary considerations indicating that additional elements in claims “may have integrated the [judicial] exception into a practical application.” 84 Fed. Reg. at 55 & nn.25–29 (citing MPEP §§ 2106.05(a)–(c), 2106.05(e)). As the above analysis indicates, we have evaluated Appellant’s arguments in light of those exemplary considerations. For the reasons discussed above, however, we determine that each independent claim as a whole does not integrate the recited abstract ideas into a practical application. Thus, each claim is directed to a judicial exception and does not satisfy § 101 under *Mayo/Alice* step one.

*Mayo/Alice Step Two: PTO Step 2B*

Because we determine that each independent claim is directed to a judicial exception, we “consider the elements of each claim both individually and ‘as an ordered combination’ to determine whether the additional elements” add enough to transform the “nature of the claim” into “significantly more” than the judicial exception. *See Alice*, 573 U.S.

at 217–18, 221–22 (quoting *Mayo*, 566 U.S. at 78–79). Under *Mayo/Alice* step two, we “look with more specificity at what the claim elements add, in order to determine ‘whether they identify an “inventive concept” in the application of the ineligible subject matter’ to which the claim is directed.” *DIRECTV*, 838 F.3d at 1258 (quoting *Elec. Power*, 830 F.3d at 1353). An “inventive concept” requires more than “well-understood, routine, conventional activity already engaged in” by the relevant community. *Rapid Litig. Mgmt. Ltd. v. CellzDirect, Inc.*, 827 F.3d 1042, 1047 (Fed. Cir. 2016) (quoting *Mayo*, 566 U.S. at 79–80). But a “non-conventional and non-generic arrangement of known, conventional pieces” may provide an “inventive concept” satisfying step two. *BASCOM*, 827 F.3d at 1350.

As discussed above, the independent claims recite computer-system components, e.g., a “server” with “one or more processors,” a “distributed computing network,” a “communication device,” a “memory device.” Appeal Br. A1–A3. The Examiner correctly finds that the claimed computer-system components correspond to “components in general purpose computers” and “generic computer components performing generic computing functions.” Final Act. 11–13; *see id.* at 5–6. Further, the Examiner correctly finds that the claimed computer-system components “are well-understood, routine, and conventional computer components.” *Id.* at 4, 11 (citing Spec. ¶¶ 20, 67–69, 71–73).

Consistent with the Examiner’s findings, the Specification describes the claimed computer-system components generically and evidences their conventional nature. *See, e.g.*, Spec. ¶¶ 20, 22–23, 67–69, 71–73. As an example, the Specification explains that a “server” may include “one or more suitable computing devices, each including one or more processors,

operating in a parallel or distributed architecture.” Spec. ¶ 20; *see id.* ¶ 22. As another example, the Specification explains that a “computing device” may include a “personal computing device,” such as “a desktop computer, a laptop computer, a tablet computer, a mobile phone, etc.” *Id.* ¶ 20. In addition, the Specification states that a “network” may “include a local area network (LAN), a wide area network (WAN), e.g., the Internet, or a combination thereof” and may “comprise storage devices and computers that are communicatively coupled to dissimilar computers and storage devices.” *Id.* ¶¶ 20, 73.

Simply implementing an abstract idea using conventional machines or devices “add[s] nothing of substance.” *See Alice*, 573 U.S. at 226–27; *see also Mayo*, 566 U.S. at 84–85 (explaining that “simply implementing a mathematical principle on a physical machine” does not suffice for patent eligibility) (citing *Gottschalk v. Benson*, 409 U.S. 63, 64–65, 71 (1972)).

In addition, the claimed computer-system components operate to collect, manipulate, and communicate data. Appeal Br. A1–A3. Court decisions have recognized that generic computer-system components operating to collect, manipulate, and communicate data are well understood, routine, and conventional to a skilled artisan. *See, e.g., Alice*, 573 U.S. at 226–27; *SAP Am.*, 898 F.3d at 1164–65 & n.1, 1170; *Symantec*, 838 F.3d at 1316–20; *Versata Dev. Grp., Inc. v. SAP Am., Inc.*, 793 F.3d 1306, 1334 (Fed. Cir. 2015); *Ultramercial*, 772 F.3d at 715–16; *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014).

For example, the system claims in *Alice* recited a “data processing system” (e.g., a “server” with “one or more processors”) with a “communications controller” (e.g., a “communication device”) and a “data

storage unit” (e.g., a “memory device”). *Alice*, 573 U.S. at 226. The Supreme Court decided that the system claims failed to satisfy § 101 because “[n]early every computer” includes those generic components for performing “basic calculation, storage, and transmission functions” and the system claims simply implemented the same abstract idea as the method claims. *Id.* at 226–27. The Court reasoned that (1) “the system claims are no different from the method claims in substance”; (2) “[t]he method claims recite the abstract idea implemented on a generic computer”; and (3) “the system claims recite a handful of generic computer components configured to implement the same idea.” *Id.* at 226.

Here, the claimed computer-system components perform “basic calculation, storage, and transmission functions” that nearly every computer system performs. Appeal Br. A1–A3; *see* Final Act. 10–12; Ans. 4, 7–8, 10. For instance, nearly every computer system includes a “processor” for manipulating data, a “memory device” for storing data, and a “communication device” for transmitting data. Hence, those generic computer-system components do not satisfy the “inventive concept” requirement. *See, e.g., Mortg. Grader, Inc. v. First Choice Loan Servs. Inc.*, 811 F.3d 1314, 1324–25 (Fed. Cir. 2016) (holding that “generic computer components such as an ‘interface,’ ‘network,’ and ‘database’” did not satisfy the “inventive concept” requirement); *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1095–96 (Fed. Cir. 2016) (describing the claimed “microprocessor” and “user interface” as “generic computer elements”); *Prism Techs. LLC v. T-Mobile USA, Inc.*, 696 F. App’x 1014, 1016–17 (Fed. Cir. 2017) (describing the claimed “authentication server,” “access

server,” “Internet Protocol network,” “client computer device,” and “database” as “indisputably generic computer components”).

We reach a similar conclusion concerning the data-collecting limitations, e.g., the “receiving” limitations in claims 1 and 8. As discussed above, the data-collecting limitations amount to mere data-gathering steps and require nothing unconventional or significant. Consequently, the claimed insignificant extra-solution activity does not satisfy the “inventive concept” requirement. *See, e.g., Mayo*, 566 U.S. at 79–80; *Flook*, 437 U.S. at 590; *OIP Techs.*, 788 F.3d at 1363–64; *CyberSource*, 654 F.3d at 1370.

Insofar as Appellant relies on the recited abstract ideas to satisfy the “inventive concept” requirement, Appellant wrongly does so. *See, e.g.,* Appeal Br. 11–14; Reply Br. 6. A “claimed invention’s use of the ineligible concept,” e.g., an abstract idea, “cannot supply the inventive concept that renders the invention ‘significantly more’ than that ineligible concept.” *BSG Tech*, 899 F.3d at 1290. “[U]nder the *Mayo/Alice* framework, a claim directed to a newly discovered” abstract idea “cannot rely on the novelty of that discovery for the inventive concept necessary for patent eligibility.” *Genetic Techs. Ltd. v. Merial L.L.C.*, 818 F.3d 1369, 1376 (Fed. Cir. 2016).

Appellant asserts that the Examiner provides “no evidence that the disputed claim limitations are well known or widely used.” Reply Br. 8; *see* Appeal Br. 11–12. Appellant cites PTO guidance about *Berkheimer v. HP*.<sup>3</sup> Reply Br. 6.

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<sup>3</sup> USPTO Memorandum, Changes in Examination Procedure Pertaining to Subject Matter Eligibility, Recent Subject Matter Eligibility Decision (*Berkheimer v. HP, Inc.*) (Apr. 19, 2018).

That PTO guidance states that citations to court decisions may demonstrate “the well-understood, routine, conventional nature of the additional element(s).” Apr. 19, 2018 PTO Mem. 4. As discussed above, court decisions have recognized that generic computer components operating to collect, manipulate, and communicate data are well understood, routine, and conventional to a skilled artisan. *See, e.g., Alice*, 573 U.S. at 226–27; *SAP Am.*, 898 F.3d at 1164–65 & n.1, 1170; *Symantec*, 838 F.3d at 1316–20; *Versata*, 793 F.3d at 1334; *Ultramercial*, 772 F.3d at 715–16; *buySAFE*, 765 F.3d at 1355.

Appellant argues that the claims “detail a particular solution and do not purport to tie up all manners of aggregating, storing and analyzing data.” Appeal Br. 12; *see id.* at 14–16. Appellant also argues that the claims do not “monopolize ‘a fundamental economic practice’” or “‘tie up’ the generalized idea of managing and analyzing the performance of investment service sales agents.” *Id.* at 15.

Appellant’s arguments do not persuade us of Examiner error. While preemption may denote patent ineligibility, its absence does not establish patent eligibility. *See FairWarning*, 839 F.3d at 1098. For claims covering a patent-ineligible concept, preemption concerns “are fully addressed and made moot” by an analysis under the *Mayo/Alice* framework. *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015).

“Whether a combination of claim limitations supplies an inventive concept that renders a claim ‘significantly more’ than an abstract idea to which it is directed is a question of law.” *BSG Tech*, 899 F.3d at 1290. Given the claimed generic computer-system components that perform generic computer functions and the claimed insignificant extra-solution

activity, we conclude that the combination of limitations in each independent claim does not supply an “inventive concept” that renders the claim “significantly more” than an abstract idea. Thus, each claim does not satisfy § 101 under *Mayo/Alice* step two.

*Summary for the Independent Claims*

For the reasons discussed above, each independent claim fails to satisfy § 101 under *Mayo/Alice* step one and step two. Hence, we sustain the § 101 rejection of the independent claims.

*Dependent Claims 2–7 and 9–20*

We also sustain the § 101 rejection of dependent claims 2–7 and 9–20 because Appellant does not argue eligibility separately for them. *See* Appeal Br. 17, 22; Reply Br. 9; 37 C.F.R. § 41.37(c)(1)(iv).

CONCLUSION

We affirm the Examiner’s decision to reject claims 1–20.

In summary:

Claims Rejected	Basis	Affirmed	Reversed
1–20	§ 101	1–20	

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