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15/184,083	06/16/2016	Michael A. Racusin	46607-197245	7065

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Clark Hill PLC
130 East Randolph Street
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EXAMINER	
REFAI, RAMSEY	

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MICHAEL A. RACUSIN

Appeal 2018-006875
Application 15/184,083
Technology Center 3600

Before ST. JOHN COURTENAY III, JENNIFER L. McKEOWN, and SCOTT E. BAIN, *Administrative Patent Judges*.

McKEOWN, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

Pursuant to 37 C.F.R. § 41.52, Appellant[1] requests rehearing of our Decision dated September 30, 2019 ("Decision"), in which we affirmed the Examiner's decision to reject claims 1–7 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter.[2] Request for Rehearing, dated November 26, 2019 ("Request"). We have reconsidered the Decision in light of Appellant's Request and, for the reasons noted below, we decline to modify our Decision.

Appellant argues that the Decision errs in determining that the

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[1] We use the word "Appellant" to refer to "applicant" as defined in 37 C.F.R. § 1.42(a). Appellant identifies the real party in interest as Michael A. Racusin. Appeal Br. 1.

[2] We note that in the Decision we also reversed the Examiner's rejection of claims 1–7 as anticipated by Cox.

claimed invention does not integrate the judicial exception into a practical application. Request 2–3. Specifically, Appellant argues that the Decision fails to consider the claims as a whole. Request 2. According to Appellant, the claims as a whole improve a point of sale (POS) terminal that controls the pump because the terminal "is programmed to automatically enable the pump in response to gas discount cards that provide a discount on only one of several components that make up the retail gas price per gallon." Request 2–3. Appellant further explains that conventional POS terminals could not process cards that only discount one of several components that make up the retail price. Appellant argues that the claimed invention solves a technical problem and, therefore, the claimed judicial exception is integrated into a practical application. Request 3.

We disagree. Namely, the claimed invention does not integrate the judicial exception into a practical application. For example, the claims do not (1) improve the functioning of a computer or other technology, (2) are not applied with any particular machine (except for a generic computer), (3) do not effect a transformation of a particular article to a different state, and (4) are not applied in any meaningful way beyond generally linking the use of the judicial exception to a particular technological environment, such that the claim as a whole is more than a drafting effort designed to monopolize the exception. *See* MPEP §§ 2106.05(a)–(c), (e)–(h).

Specifically, we are not persuaded that the claimed invention improves the POS device or solves a technical problem. As the Examiner explains, "[t]he claimed invention merely performs a simple 'calculation' to determine the number of gallons that can be pumped at the pre-paid discounted rate using simple mathematics (addition and subtraction)." Ans.

6. In other words, although the claimed invention may recite a novel mathematical calculation method for a POS device, the underlying steps are merely basic mathematical calculations, i.e. addiction and subtraction, performed by a generic computer. As such, as discussed in the Decision, the claimed invention does not provide a technical improvement, but instead merely uses the computer as tool to perform the abstract idea, namely to calculate a discounted gas price and conduct the sales transaction. Decision 9; *see also, e.g., Credit Acceptance Corp. v. Westlake Services*, 859 F.3d 1044 (Fed. Cir. 2017) (using a computer as a tool to process an application for financing a purchase). Accordingly, we determine that the additional limitations, alone or in combination, do not integrate the judicial exception into a practical application.

CONCLUSION

While we have considered the arguments raised by Appellant in the Request, we find them not persuasive to identify error in the original Decision. Based on the record before us now and in the original appeal, we are still of the view that the Examiner did not err in rejecting claims 1–7 as being directed to patent-ineligible subject matter.

Outcome of Decision on Rehearing:

Claims Rejected	**35 U.S.C. §**	**Reference(s)/Basis**	**Denied**	**Granted**
1–7	101	Eligibility	1–7	
Overall Outcome			1–7	

Final Outcome of Appeal after Rehearing:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–7	101	Eligibility	1–7	
1–7	102	Cox		1–7
Overall Outcome			1–7	

TIME PERIOD FOR RESPONSE

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

DENIED