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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* ERICK KOBRES

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Appeal 2018-007127  
Application 13/285,386  
Technology Center 3600

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Before MICHAEL C. ASTORINO, NINA L. MEDLOCK, and  
BRUCE T. WIEDER, *Administrative Patent Judges*.

MEDLOCK, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant<sup>1</sup> appeals under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1–12. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> We use the term “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Our decision references Appellant’s Appeal Brief (“Appeal Br.,” filed February 15, 2018) and Reply Brief (“Reply Br.,” filed July 3, 2018), and the Examiner’s Answer (“Ans.,” mailed May 3, 2018) and Final Office Action (“Final Act.,” mailed September 29, 2017). Appellant identifies NCR Corporation as the real party in interest. Appeal Br. 2.

### CLAIMED INVENTION

The claimed invention relates to “a method for visually conducting an automated transaction with an enterprise system” (Spec. ¶ 6).

Claim 1, reproduced below with bracketed notations added, is the sole independent claim and representative of the subject matter on appeal:

1. A non-transitory processor-readable medium having instructions programmed into a mobile device to perform a method, comprising:

[(a)] obtaining, on a processor of the mobile device, a visual identifier for a transaction, the visual identifier acquired from a terminal device of an enterprise and obtaining the transaction as a pre-staged transaction previously defined by a customer operating the mobile device and awaiting completion by the customer at the terminal device;

[(b)] decoding, on the processor of the mobile device, the visual identifier in order to obtain payment details for completing the transaction;

[(c)] confirming, on the processor of the mobile device the payment details and also augmenting, on the mobile device, the payment details and receiving a personal identification number (PIN) from the customer for completing the transaction with the augmented payment details;

[(d)] generating, on the processor of the mobile device, a visual transaction envelope for completing the transaction on the terminal device, the visual transaction envelope includes digitally signed and encrypted information for a transaction identifier for the transaction, payment information for payment of the transaction including the payment details, and a loyalty card for the customer of the transaction;

[(e)] providing, from the processor of the mobile device, the visual transaction envelope to the terminal device to conclude the transaction; and

[(f)] displaying, by the processor of the mobile device, a screen in a display of the mobile device, the screen presenting an interactive video presentation of the concluded transaction to the customer to obtain instant feedback from the customer on completion of the transaction.

### REJECTION

Claims 1–12 are rejected under 35 U.S.C. § 101 as directed to patent-ineligible subject matter.

### ANALYSIS

Appellant argues the pending claims as a group (Appeal Br. 8–10). We select independent claim 1 as representative. The remaining claims stand or fall with claim 1. *See* 37 C.F.R. §41.37(c)(1)(iv).

Under 35 U.S.C. § 101, an invention is patent eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. The Supreme Court, however, has long interpreted § 101 to include an implicit exception: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014).

The Supreme Court, in *Alice*, reiterated the two-step framework previously set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012), “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice Corp.*, 573 U.S. at 217. The first step in that analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts.” *Id.* If the claims are not directed to a patent-ineligible concept, e.g., an abstract idea, the inquiry

ends. Otherwise, the inquiry proceeds to the second step where the elements of the claims are considered “individually and ‘as an ordered combination’” to determine whether there are additional elements that “‘transform the nature of the claim’ into a patent-eligible application.” *Id.* (quoting *Mayo*, 566 U.S. at 79, 78). This is “a search for an ‘inventive concept’ — *i.e.*, an element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.’” *Id.* at 217–18 (alteration in original).

In rejecting the pending claims under 35 U.S.C. § 101, the Examiner determined that the claims are directed to “creating a sales transaction in a network,” which the Examiner concluded is similar to other concepts that the courts have held abstract (Final Act. 2–4). The Examiner also determined that the claims do not include additional elements or a combination of elements sufficient to amount to significantly more than the abstract idea itself (*id.* at 2, 5).

After Appellant’s briefs were filed, and the Examiner’s Answer mailed, the U.S. Patent and Trademark Office (the “USPTO”) published revised guidance for use by USPTO personnel in evaluating subject matter eligibility under 35 U.S.C. § 101. 2019 REVISED PATENT SUBJECT MATTER ELIGIBILITY GUIDANCE, 84 Fed. Reg. 50, 57 (Jan. 7, 2019) (the “2019 Revised Guidance”). That guidance revised the USPTO’s examination procedure with respect to the first step of the *Mayo/Alice* framework by (1) “[p]roviding groupings of subject matter that [are] considered an abstract idea”; and (2) clarifying that a claim is not “directed to” a judicial exception if the judicial exception is integrated into a practical application of that exception. *Id.* at 50. The 2019 Revised Guidance, by its terms, applies to all

applications, and to all patents resulting from applications, filed before, on, or after January 7, 2019. *Id.*<sup>2</sup>

*Step One of the Mayo/Alice Framework (2019 Revised Guidance, Step 2A)*

The first step in the *Mayo/Alice* framework, as mentioned above, is to determine whether the claims at issue are “directed to” a patent-ineligible concept, e.g., an abstract idea. *Alice Corp.*, 573 U.S. at 217. This first step, as set forth in the 2019 Revised Guidance (i.e., Step 2A), is a two-prong test; in Step 2A, Prong One, we look to whether the claim recites a judicial exception, e.g., one of the following three groupings of abstract ideas: (1) mathematical concepts; (2) certain methods of organizing human activity, e.g., fundamental economic principles or practices, commercial or legal interactions; and (3) mental processes. 2019 Revised Guidance, 84 Fed. Reg. at 54. If so, we next consider whether the claim includes additional elements, beyond the judicial exception, that “integrate the [judicial] exception into a practical application,” i.e., that apply, rely on, or use the judicial exception in a manner that imposes a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception (“Step 2A, Prong Two”). *Id.* at 54–55. Only if the claim (1) recites a judicial exception and (2) does not integrate

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<sup>2</sup> The 2019 Revised Guidance supersedes MANUAL OF PATENT EXAMINING PROCEDURE (“MPEP”) § 2106.04(II) and also supersedes all versions of the USPTO’s “Eligibility Quick Reference Sheet Identifying Abstract Ideas.” See 2019 Revised Guidance, 84 Fed. Reg. at 51 (“Eligibility-related guidance issued prior to the Ninth Edition, R-08.2017, of the MPEP (published Jan. 2018) should not be relied upon.”). Accordingly, Appellant’s arguments challenging the sufficiency of the Examiner’s rejection will not be addressed to the extent those arguments are based on now superseded USPTO guidance.

that exception into a practical application do we conclude that the claim is “directed to” the judicial exception, e.g., an abstract idea. *Id.*

We are not persuaded by Appellant’s arguments that the Examiner erred in determining that claim 1 is directed to an abstract idea (Appeal Br. 7–9). The Federal Circuit has explained that “the ‘directed to’ inquiry applies a stage-one filter to claims, considered in light of the specification, based on whether ‘their character as a whole is directed to excluded subject matter.’” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016) (quoting *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015)). It asks whether the focus of the claims is on a specific improvement in relevant technology or on a process that itself qualifies as an “abstract idea” for which computers are invoked merely as a tool. *See id.* at 1335–36. Here, it is clear from the Specification, including the claim language, that the claims focus on an abstract idea, and not on any improvement to technology and/or a technical field.

The Specification is entitled “Techniques for Visually Conducting Transactions,” and describes in the Background section that consumers are increasingly using kiosks to conduct business with enterprises (Spec. ¶ 1). What is considered a kiosk also is evolving with technology (*id.* ¶ 2) to include digital signs, for example, that “provide advertisements and mechanisms [e.g., near field communication (‘NFC’)] for users to interact with the displays to perform transactions” (*id.*), e.g., purchases, registration for loyalty programs, requesting additional information concerning a good or service, etc. (*id.* ¶ 3). The Specification describes that NFC technologies are increasingly becoming popular for automating consumer transactions; however, according to the Specification, “NFC is a fragmented body of

standards, which are not unified, and which have poor industry adoption and cross-industry support” and “NFC adoption requires specialized hardware in every mobile device or credit card as well as on each point of service terminal for enterprises” (*id.* ¶ 4). The Specification, thus, concludes that “NFC adoption is years away from full and successful deployment and it is not entirely clear . . . if such a full scale deployment will or can occur” (*id.* ¶ 5).

The claimed invention is ostensibly intended to provide a viable alternative to NFC for visually conducting automated transactions, i.e., to provide “solutions for visually transacting that can provide NFC-like experiences to consumers without NFC hardware” (*id.* ¶ 18). Claim 1, thus, recites a method for visually conducting an automated transaction by:

(1) receiving, by a mobile application of a customer mobile device from an enterprise terminal device, a visual identifier<sup>3</sup> for a transaction awaiting completion by the customer at the terminal device, i.e.,

obtaining, on a processor of the mobile device, a visual identifier for a transaction, the visual identifier acquired from a terminal device of an enterprise and obtaining the transaction as a pre-staged transaction previously defined by a customer operating the mobile device and awaiting completion by the customer at the terminal device

(step (a)); (2) decoding the visual identifier to obtain payment details, i.e., “decoding, on the processor of the mobile device, the visual identifier in order to obtain payment details for completing the transaction” (step (b));

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<sup>3</sup> The Specification discloses that “[t]he visual service identifier and visual transaction envelope can be implemented as any form of digitally displayed information such as a two-dimensional (2D) barcode, Quick Response (QR code), machine or human readable text, animation, pattern of flashes, *etc.*” (Spec. ¶ 17, *see also id.* ¶ 56).

(3) confirming and augmenting the payment details, i.e., “confirming, on the processor of the mobile device the payment details and also augmenting, on the mobile device, the payment details and receiving a personal identification number (PIN) from the customer for completing the transaction with the augmented payment details” (step (c)); (4) generating a visual transaction envelope including information for completing the transaction on the terminal device and transmitting the visual transaction envelope to the terminal device, i.e.,

generating, on the processor of the mobile device, a visual transaction envelope for completing the transaction on the terminal device, the visual transaction envelope includes digitally signed and encrypted information for a transaction identifier for the transaction, payment information for payment of the transaction including the payment details, and a loyalty card for the customer of the transaction; [and]

providing, from the processor of the mobile device, the visual transaction envelope to the terminal device to conclude the transaction

(steps (d) and (e)); and (5) displaying an interactive video presentation of the concluded transaction to the customer, i.e., “displaying, by the processor of the mobile device, a screen in a display of the mobile device, the screen presenting an interactive video presentation of the concluded transaction to the customer to obtain instant feedback from the customer on completion of the transaction” (step (f)). These limitations, given their broadest reasonable interpretation, recite a method for conducting a sales transaction, i.e., a fundamental economic practice, which is a method of organizing human activity and, therefore, an abstract idea. *See* 2019 Revised Guidance, 84 Fed. Reg. at 52. *See also, e.g., Priceplay.com, Inc. v. AOL Advert., Inc.*, 83 F. Supp. 3d 577, 583 (D. Del. 2015) (“Auctions, competitive activities,

and sales transactions are all abstract ideas, and do not become non-abstract when combined and conducted over the Internet.”), *aff’d*, 627 F. App’x 925 (Fed. Cir. 2016).

Having concluded that claim 1 recites a judicial exception, i.e., an abstract idea (Step 2A, Prong One), we next consider whether the claim recites additional elements that integrate the judicial exception into a practical application (Step 2A, Prong Two).

The only additional elements recited in claim 1, beyond the abstract idea, are a “processor of a mobile device” and a “terminal device” — elements that, as the Examiner observes (Final Act. 5), are recited at a high degree of generality, i.e., as generic computer components (*see, e.g.*, Spec. ¶¶ 11, 13). We find no indication in the Specification, nor does Appellant direct us to any indication, that the operations recited in claim 1 invoke any assertedly inventive programming, require any specialized computer hardware or other inventive computer components, i.e., a particular machine, or that the claimed invention is implemented using other than generic computer components to perform generic computer functions. *See DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014) (“[A]fter *Alice*, there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible.”).

We also find no indication in the Specification that the claimed invention effects a transformation or reduction of a particular article to a different state or thing. Nor do we find anything of record that attributes an improvement in computer technology and/or functionality to the claimed invention or that otherwise indicates that the claimed invention integrates the

abstract idea into a “practical application,” as that phrase is used in the Revised Guidance.<sup>4</sup>

Citing the Federal Circuit’s decision in *Core Wireless Licensing S.A.R.L. v. LG Electronics, Inc.*, 880 F.3d 1356 (Fed. Cir. 2018), Appellant argues that the present claims “provide a specific manner of displaying a limited set of information (at least based on the claim language reciting: ‘displaying . . . an interactive video presentation of the concluded transaction to obtain instant feedback from the customer on completion of the transaction)’” (Appeal Br. 8–9). And Appellant asserts, “accordingly[,] the claims are not abstract under Mayo step 1” (*id.* at 9).

Appellant’s reliance on *Core Wireless* is misplaced. There, the claims were directed to “an improved user interface for electronic devices, particularly those with small screens.” *Core Wireless*, 880 F.3d at 1363. The specification described that “prior art interfaces had many deficits relating to the efficient functioning of the computer, requiring a user ‘to scroll around and switch views many times to find the right data/functionality’” and disclosed that the claimed invention improved the “efficiency of using the electronic device by bringing together ‘a limited list of common functions and commonly accessed stored data,’ which can be accessed directly from the main menu.” *Id.* The specification also disclosed

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<sup>4</sup> The 2019 Revised Guidance references MPEP § 2106.05(a)–(c) and (e) in describing the considerations that are indicative that an additional element or combination of elements integrates the judicial exception, e.g., the abstract idea, into a practical application. 2019 Revised Guidance, 84 Fed. Reg. at 55. If the recited judicial exception is integrated into a practical application, as determined under one or more of these MPEP sections, the claim is not “directed to” the judicial exception.

that “[t]he speed of a user’s navigation through various views and windows” was improved because it “saves the user from navigating to the required application, opening it up, and then navigating within that application to enable the data of interest to be seen or a function of interest to be activated” — disclosure that the Federal Circuit concluded “clearly indicates that the claims are directed to an improvement in the functioning of computers, particularly those with small screens.” *Id.*

Appellant asserts here that, as in *Core Wireless*, the claims provide “a specific manner” of displaying a limited set of information. But, we find no indication in the Specification, nor does Appellant direct us to any indication, that claim 1 is directed to an improved interface analogous to the one in *Core Wireless* that provides an improvement in computer functionality.

Further addressing step one of the *Mayo/Alice* analysis, Appellant summarily asserts that, by “providing processing for preparing a transaction for processing in a visual encoded format on a mobile device for transaction completion on a terminal device,” the pending claims “improve[ ] the capabilities associated with transaction processing on both the mobile device and the terminal device by extending and enhancing such existing transaction processing in these devices” and are not abstract in accordance with at least *Enfish*, *McRO*,<sup>5</sup> and *NVIDIA*<sup>6</sup> (Appeal Br. 9). Appellant also maintains that the present claims improve “the technological processes

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<sup>5</sup> *McRO, Inc. v. Bandai Namco Games Am., Inc.*, 837 F.3d 1299 (Fed. Cir. 2016).

<sup>6</sup> We understand Appellant to be referencing *Visual Memory LLC v. NVIDIA Corp.*, 867 F.3d 1253 (Fed. Cir. 2017).

associated with transaction processing” (*id.*). But, Appellant neither explains how or in what way(s) “the capabilities” and “technological processes” associated with transaction processing are improved, nor directs us to any disclosure in the Specification to support this contention. Also, although Appellant ostensibly maintains that the present claims are analogous to those held patent eligible in *Enfish*, *McRO*, and *NVIDIA*, Appellant does not explain in what way(s) the claims are similar or how those similarities impact the analysis under step one of the *Mayo/Alice* framework.

Appellant’s argument that the claims are not directed to an abstract idea because the claims “are not preemptive of any existing transaction processing technologies” is likewise unpersuasive (Appeal Br. 9; *see also* Reply Br. 3–4). There is no dispute that the Supreme Court has described “the concern that drives [the exclusion of abstract ideas from patent-eligible subject matter] as one of pre-emption,” *Alice Corp.*, 573 U.S. at 216. But, characterizing preemption as a driving concern for patent eligibility is not the same as characterizing preemption as the sole test for patent eligibility. “The Supreme Court has made clear that the principle of preemption is the basis for the judicial exceptions to patentability” and “[f]or this reason, questions on preemption are inherent in and resolved by the § 101 analysis.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (citing *Alice Corp.*, 573 U.S. at 216). “[P]reemption may signal patent ineligible subject matter, [but] the absence of complete preemption does not demonstrate patent eligibility.” *Id.*

We conclude, for the reasons outlined above, that claim 1 recites a fundamental economic practice, i.e., a method of organizing human activity

and, therefore, an abstract idea, and that the additional elements recited in the claim are no more than generic components used as tools to perform the recited abstract idea. As such, they do not integrate the abstract idea into a practical application. *See Alice Corp.*, 573 U.S. at 223–24 (“[W]holly 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.’”) (quoting *Mayo*, 566 U.S. at 77)). Accordingly, we agree with the Examiner that claim 1 is directed to an abstract idea.

*Step Two of the Mayo/Alice Framework (2019 Revised Guidance, Step 2B)*

Having determined under step one of the *Mayo/Alice* framework that claim 1 is directed to an abstract idea, we next consider under Step 2B of the 2019 Revised Guidance, the second step of the *Mayo/Alice* framework, whether claim 1 adds specific limitations beyond the judicial exception that are not “well-understood, routine, conventional” in the field, or simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.

Responding to the Examiner’s Answer, Appellant asserts in the Reply Brief that “processing visual identifiers and visual transaction envelopes in the course of conducting a transaction is not conventional” (Reply Br. 3). Yet, these limitations (i.e., “decoding . . . the visual identifier in order to obtain payment details for completing the transaction” and “generating . . . a visual transaction envelope for completing the transaction on the terminal device,” as recited in claim 1) are part of the abstract idea, i.e., conducting a sales transaction; they are not additional elements to be considered when

determining whether claim 1 includes additional elements or a combination of elements that is sufficient to amount to significantly more than the judicial exception.<sup>7</sup>

It could not be clearer from *Alice*, that under step two of the *Mayo/Alice* framework, the elements of each claim are considered both individually and “as an ordered combination” to determine whether the additional elements, i.e., the elements *other* than the abstract idea itself, “transform the nature of the claim” into a patent-eligible application. *Alice Corp.*, 573 U.S. at 217 (internal quotations and citation omitted); *see Mayo*, 566 U.S. at 72–73 (requiring that “a process that focuses upon the use of a natural law also contain *other* elements or a combination of elements, sometimes referred to as an ‘inventive concept,’ sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the natural law itself” (emphasis added) (internal citation omitted)). In other words, the inventive concept under step two of the *Mayo/Alice* test cannot be the abstract idea itself:

It is clear from *Mayo* that the “inventive concept” cannot be the abstract idea itself, and *Berkheimer* . . . leave[s] untouched the numerous cases from this court which have held claims ineligible because the only alleged “inventive concept” is the abstract idea. *Berkheimer v. HP Inc.*, 890 F.3d 1369, 1374 (Fed. Cir. 2018) (Moore, J., concurring); *see also BSG Tech LLC v. BuySeasons, Inc.*, 899 F.3d 1281, 1290 (Fed. Cir. 2018) (“It has been clear since *Alice* that a claimed

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<sup>7</sup> We also note, for the record, that the Specification discloses that the visual service identifier and visual transaction envelope can be implemented as human readable text (*see* Spec. ¶¶ 17, 56). Appellant has presented no persuasive argument that processing human readable text in the course of conducting a sales transaction is unconventional.

invention’s use of the ineligible concept to which it is directed cannot supply the inventive concept that renders the invention ‘significantly more’ than that ineligible concept.”) (internal citation omitted).

The Examiner determined here, and we agree, that the only claim elements beyond the abstract idea are a “processor of a mobile device” and a “terminal device,” i.e., generic computer components used to perform generic computer functions (Final Act. 5) — a determination amply supported by, and fully consistent with the Specification (*see, e.g.*, Spec. ¶¶ 11, 13).<sup>8</sup>

Appellant cannot reasonably maintain, nor does Appellant, that there is a genuine issue of material fact regarding whether operation of these components is well-understood, routine, or conventional, where, as here, there is nothing in the Specification to indicate that the operations recited in claim 1 require any specialized hardware or inventive computer components or that the claimed invention is implemented using other than generic computer components to perform generic computer functions, e.g., receiving, processing, and transmitting information. Indeed, the Federal Circuit, in accordance with *Alice*, has “repeatedly recognized the absence of

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<sup>8</sup> The Office’s April 19, 2018 Memorandum to the Examining Corps from Deputy Commissioner for Patent Examination Policy, Robert W. Bahr, entitled, Changes in Examination Procedure Pertaining to Subject Matter Eligibility, Recent Subject Matter Eligibility Decision (*Berkheimer v. HP, Inc.*), available at <https://www.uspto.gov/sites/default/files/documents/memo-berkheimer-20180419.PDF>, expressly directs that an examiner may support the position that an additional element (or combination of elements) is well-understood, routine or conventional with “[a] citation to an express statement in the specification . . . that demonstrates the well-understood, routine, conventional nature of the additional element(s)” (*id.* at 3).

a genuine dispute as to eligibility” where claims have been defended as involving an inventive concept based “merely on the idea of using existing computers or the Internet to carry out conventional processes, with no alteration of computer functionality.” *Berkheimer*, 890 F.3d at 1373 (Moore, J., concurring) (citations omitted); *see also BSG Tech*, 899 F.3d at 1291 (“BSG Tech does not argue that other, non-abstract features of the claimed inventions, alone or in combination, are not well-understood, routine and conventional database structures and activities. Accordingly, the district court did not err in determining that the asserted claims lack an inventive concept.”).

Appellant also misapprehends the controlling precedent to the extent Appellant maintains that claim 1 includes additional elements or a combination of elements that is not well-understood, routine, and conventional, because the claim is allegedly novel and/or non-obvious in view of the prior art (Appeal Br. 9; *see also* Reply Br. 3). Neither a finding of novelty nor a non-obviousness determination automatically leads to the conclusion that the claimed subject matter is patent eligible. Although the second step in the *Mayo/Alice* framework is termed a search for an “inventive concept,” the analysis is not an evaluation of novelty or non-obviousness, but rather, a search for “an element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.’” *Alice Corp.*, 573 U.S. at 217–18 (citation omitted). “Groundbreaking, innovative, or even brilliant discovery does not by itself satisfy the § 101 inquiry.” *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 591 (2013). A novel and non-obvious claim directed to a purely

abstract idea is, nonetheless, patent ineligible. *See Mayo*, 566 U.S. at 90; *see also Diamond v. Diehr*, 450 U.S. 175, 188–89 (1981) (“The ‘novelty’ of any element or steps in a process, or even of the process itself, is of no relevance in determining whether the subject matter of a claim falls within the § 101 categories of possibly patentable subject matter.”).

We are not persuaded, on the present record, that the Examiner erred in rejecting independent claim 1 under 35 U.S.C. § 101. Therefore, we sustain the Examiner’s rejection of claim 1, and claims 2–12, which fall with claim 1.

### CONCLUSION

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1–12	101	Eligibility	1–12	

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