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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/177,133	07/06/2011	Ron Hirson	BOKU-P037	5866
17169	7590	03/11/2020	EXAMINER	
Stephen M. De Klerk MatterLight IP 2033 Gateway Place 5th Floor San Jose, CA 95110			CRANFORD, MICHAEL D	
			ART UNIT	PAPER NUMBER
			3694	
			NOTIFICATION DATE	DELIVERY MODE
			03/11/2020	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RON HIRSON

Appeal 2018-007503
Application 13/177,133
Technology Center 3600

Before MURRIEL E. CRAWFORD, JAMES P. CALVE, and
AMEE A. SHAH, *Administrative Patent Judges*.

CALVE, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the decision of the Examiner to reject claims 1–19 and 21. Final Act. 2; Appeal Br. 34. Claim 20 is cancelled. Final Act. 2; Appeal Br. 41 (Claims App.). We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM and enter a New Ground of Rejection pursuant to our authority under 37 C.F.R. § 41.50(b).

¹ “Appellant” refers to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies Boku, Inc. as the real party in interest. Appeal Br. 3.

CLAIMED SUBJECT MATTER

Claims 1 and 19 are independent with claim 1 reproduced below.

1. A method, comprising:

receiving, in a computing device that is connected to (i) an account server of a funding source (ii) at least one user terminal, the at least one user terminal including a mobile phone having a source phone number, and (iii) a mobile phone having a destination phone number, the source phone number and an account identifier of the funding source from the user terminal;

storing, in the computing device in response to receiving the account identifier of the funding source, the account identifier of the funding source in association with a source phone number;

receiving, in the computing device after receiving and storing the account identifier of the funding source, a request from the user terminal including an amount to be transferred identifying the source phone number and the destination phone number;

identifying, by the computing device in response to the reception of the request, the account identifier of the funding source associated with the source phone number based on the source phone number in the request;

communicating, by the computing device in response to the identification of the account identifier, with the account server of the funding source using the account identifier of the funding source that has been identified to charge an account of the account server of the funding source based on the account identifier for an amount of funds based on the amount to be transferred;

obtaining, by the computing device in response to the communication with the account server, funds for the amount from the funding source, in accordance with the charge;

storing, by the computing device in response to obtaining of the funds, data representing the amount of funds that has been obtained against the source phone number;

storing, by the computing device in response to obtaining of the funds, data representing the amount provided from the source phone number to the destination phone number based on the charge; and

transmitting, from the computing device, a message to the mobile phone at the destination phone number, the message indicating availability of funds for the amount.

REJECTIONS

Claims 1–19 and 21 are rejected as directed to patent-ineligible subject matter under a judicial exception to 35 U.S.C. § 101.

Claims 1–4, 8, 9, 11, 13, 14, and 19 are rejected under 35 U.S.C. § 102(b) as anticipated by Hamzeh (US 2008/0133403 A1, pub. June 5, 2008).

Claim 5 is rejected under 35 U.S.C. § 103(a) as unpatentable over Hamzeh and Official Notice.

Claims 6, 7, and 15 are rejected under 35 U.S.C. § 103(a) as unpatentable over Hamzeh and Levchin (US 7,089,208 B1, iss. Aug. 8, 2006).

Claims 10, 12, and 21 are rejected under 35 U.S.C. § 103(a) as unpatentable over Hamzeh and Pousti (US 2007/0260556 A1, pub. Nov. 8, 2007).

Claim 16 is rejected under 35 U.S.C. § 103(a) as unpatentable over Hamzeh and Milberger (US 2002/0111908 A1, pub. Aug. 15, 2002).

Claims 17 and 18 are rejected under 35 U.S.C. § 103(a) as unpatentable over Hamzeh, Milberger, and Chong (US 2009/0055292 A1, pub. Feb. 26, 2009).

ANALYSIS

Claims 1–19 and 21
Directed to Patent-Ineligible Subject Matter

Appellant argues the claims of this rejection as a group. Appeal Br. 8–22. We select claim 1 as representative. *See* 37 C.F.R. § 41.37(c)(1)(iv).

The Examiner determines that claim 1 recites the abstract idea of obtaining funds from a funding source using a phone number received as part of a transfer request from one phone number to another phone number. *Id.* at 7; Ans. 34. The Examiner determines that this concept is organizing human activity and a fundamental economic practice. Final Act. 8.

The Examiner also determines that claim 1 does not include additional elements that amount to significantly more than the judicial exception. *Id.* The Examiner determines a computer device, mobile device, and computer-readable storage medium are generic computer components used to perform generic computer functions of storing, retrieving, processing, and displaying information to implement the recited abstract ideas in a system that does not improve computers or computer-related technology. *Id.* at 8–9; Ans. 34–35.

Appellant argues that the claims recite a technical solution to obtain funds from a funding source using a phone number that is received as part of a transfer from one phone number to another phone number as “in-funding based on a phone number to phone number transfer.” Appeal Br. 9, 13–15. Appellant argues that this “algorithm” operates differently than conventional databases and is distinguishable from claims that add conventional computer components to well-known business practices. *Id.* at 15–17. Appellant also argues that the claimed in-funding is a specific type of process designed to improve the way a computer functions. *Id.* at 18.

Section 101 of the Patent Act defines patent-eligible-subject matter as:

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 (2012). However, “[l]aws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. Pty. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014) (citation omitted).

To distinguish patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications, we first determine whether the claims are directed to a patent-ineligible concept. *Id.* at 217. If they are, we consider the elements of each claim, individually and as an ordered combination, to determine if additional elements transform the claim into a patent-eligible application, e.g., by providing an “inventive concept” that ensures the patent amounts to significantly more than a patent on the ineligible concept. *Id.* at 217–218.

The USPTO has issued guidance about this framework. *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Revised Guidance”). Under the Revised Guidance, to determine whether a claim is “directed to” an abstract idea, we evaluate whether the claim recites (1) any judicial exceptions, including certain groupings of abstract ideas listed in the Revised Guidance (i.e., mathematical concepts, certain methods of organizing human activities such as a fundamental economic practice, or mental processes); and (2) additional elements that integrate the judicial exception into a practical application (*see* MPEP §§ 2106.05(a)–(c), (e)–(h)). *See* Revised Guidance, 84 Fed. Reg. at 52–55.

Only if a claim (1) recites a judicial exception and also (2) does not integrate that exception into a practical application, do we then consider whether the claim (3) adds a specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field (*see* MPEP § 2106.05(d)) or (4) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception. *Id.* at 56.

Do the Claims Recite Judicial Exceptions?

We agree with the Examiner that claim 1 recites an abstract idea of organizing human activity and a fundamental economic practice. *See* Final Act. 7–8. The Revised Guidance describes this concept as certain methods of organizing human activity—fundamental economic practices, commercial interactions between people. *See* Revised Guidance, 84 Fed. Reg. at 52.

Appellant’s Specification describes this idea as using mobile phones to make financial transfers from a financial account, e.g., for online goods or services. Spec. ¶¶ 2, 63–71, 108. As claimed, the financial transaction is an electronic funds transfer from a payor account to a third party intermediary, which then notifies a payee of the availability of the funds to facilitate the funds transfer. *See id.* ¶¶ 384–95; Appeal Br. 15–16 (citing Spec. ¶ 384).

Such a “method of exchanging financial obligations between two parties using a third-party intermediary to mitigate settlement risk, without more, recites a fundamental economic practice of intermediated settlement.” *Alice*, 573 U.S. at 219–20 (intermediate settlement is an abstract idea).

The intermediary “computing device” 101 *interfaces* between mobile phones 117 and servers 113 of a funding account “to confirm and/or approve transactions and to operate on the account identified.” Spec. ¶ 64.

The first steps of “receiving” and “storing” recite this abstract idea.

To exchange financial obligations or transfer funds, the intermediary “computing device” obtains an identifier of the payor (source), the payor’s account identifier, and an identifier of the payee. This occurs by

receiving, in a computing device that is connected to (i) an account server of a funding source (ii) at least one user terminal . . . including a mobile phone having a source phone number, and (iii) a mobile phone having a destination phone number, the source phone number and an account identifier of the funding source from the user terminal.

Appeal Br. 35 (Claims App.).

The next step stores the account identifier of the funding source in association with the payor’s (source’s) phone number. *Id.*

These steps simply organize the human activity of an electronic funds transfer in a financial transaction to transfer funds, which is an abstract idea.

The use of a mobile phone number to identify the payor (source) and the payee (destination) is another aspect of the abstract idea discussed above. The phone numbers are used to identify each party.

Appellant’s characterization of the “invention” as a mobile phone-to-mobile phone financial transfer or “in-funding” is misleading because there is no financial transfer of value or funds from a mobile phone device of one party to a mobile phone device of another party. In other words, the phones do not contain electronic purses or accounts to dispense or receive funds.

Instead, the claim language makes clear that payor (source) funds are taken from an account server of a funding source of the payor. The funding source of the payor is an account server of a financial institution such as a bank, credit union, credit card company, etc. Spec. ¶ 62. The mobile phone number is simply a payor’s identifier number linked to the funding account.

Similarly, the intermediary computing device (interface 101) delivers the funds from its own account to an *account* of the payee (destination). The phone number of the payee (destination) is simply an identifier of the payee. The intermediary interface 101 provides the amount of funds received from the payor to a destination account associated with the destination phone such as a credit card account, a debit card account, a prepaid card account, a bank account, a checking account, or a stored value account. *Id.* ¶ 393.

Therefore, claim 1 merely recites a financial transaction between two parties in which funds are transferred electronically using mobile phone numbers as identifiers of each party by linking the phone number identifiers to respective existing financial accounts of each party.²

The mobile phone numbers are codes that identify each party. Such identification techniques, without more, recite an abstract idea of organizing human activity. *See RecogniCorp, LLC v. Nintendo Co., Ltd.*, 855 F.3d 1322, 1326 (Fed. Cir. 2017) (“This method reflects standard encoding and decoding, an abstract concept long utilized to transmit information.”); *see also Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1368 (Fed. Cir. 2015) (using a profile keyed to a user identity to track financial transactions over the Internet and telephone networks is an abstract idea); *Bridge and Post, Inc. v. Verizon Commc ’ns, Inc.*, 778 F. App’x 882, 887 (Fed. Cir. 2019) (steps of retrieving “a persistent device identifier associated with the network access device,” “retrieving” information associated with the identifier, “analyzing” the information, and “placing directed media” based on the analysis recites an abstract idea).

² Notably, claim 1 does not include the further step of the intermediary computing device actually transferring funds to a destination account.

The next steps of “receiving,” “identifying,” “communicating,” and “obtaining” recite other steps of organizing the transaction activities. The intermediary computing device *receives* “a request from the user terminal [payor phone] including an amount to be transferred identifying the source phone number and the destination phone number.” The computing device *identifies* “the account identifier of the funding source associated with the source phone number based on the source phone number in the request,” *communicates* “with the account server of the funding source using the account identifier of the funding source . . . to charge an account of the account server of the funding source based on the account identifier for an amount of funds based on the amount to be transferred,” and *obtains* “funds for the amount from the funding source.” Appeal Br. 35 (Claims App.).

Finally, the computing device *stores* “data representing the amount of funds . . . obtained” and “the amount provided from the source phone number” and *transmits* “a message to the mobile phone at the destination phone number . . . indicating availability of funds for the amount.” *Id.*

We determine claim 1 recites an abstract idea of certain methods of organizing human activity as fundamental economic practices or commercial interactions of people. *Inventor Holdings LLC v. Bed Bath & Beyond, Inc.*, 876 F.3d 1372, 1378 (Fed. Cir. 2017) (“The idea that a customer may pay for items ordered from a remote seller at a third-party’s local establishment is the type of fundamental business practice that, when implemented using generic computer technology, is not patent-eligible under *Alice*.”); *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1352–54 (Fed. Cir. 2014) (transaction performance guaranty service by a safe transaction service provider for an online commercial transaction recited a fundamental economic practice).

Are the Claims Integrated Into a Practical Application?

We next consider whether claim 1 recites additional elements that integrate the abstract idea into a practical application. Revised Guidance, 84 Fed. Reg. at 54 (Revised Step 2A, Prong Two).

We agree with the Examiner that claim 1 uses existing technology to implement an abstract idea with generic computer components that perform generic functions. Ans. 3. Claim 1 does not include additional elements that are sufficient to amount to significantly more than the judicial exception. The mobile device and wireless store transmitter are recited at high levels of generality to perform generic functions of computer applications. Final Act. 3–4, 8–9. We find no improvement to databases, computer technology, mobile phones, networks, or financial transactions recited in claim 1. At best, the claim recites a business solution to transfer funds by associating a mobile phone number with an existing financial account through a third-party intermediary. The method is recited at such a high level of generality with generic computer components performing generic functions that it fails to integrate the abstract ideas into a practical application.

The use of computer interchange 101 as an intermediary with its own bank account to receive funds from a funding source of the payor and pay the funds to a destination (payee) ensures that “the financial information of the user [payer/source] is not revealed to the merchant.” Spec. ¶¶ 56, 63, 108, 116, 147. Intermediary interchange 101 also protects the source phone number of the payor from being disclosed to the merchant at the destination phone number. *See id.* ¶ 304. Thus, it is a business solution. It protects the payor’s financial information when the payor engages in a funds transfer or financial transaction using existing technology.

It is well-settled that reciting generic computer components that perform generic computer tasks to carry out an abstract idea does not make the abstract idea patent-eligible.

Moving to step two of the *Alice* framework, it is clear that the claims contain no inventive concept. The recited elements, e.g., a database, a user profile (“a profile keyed to a user identity,” ’137 patent col. 10 l. 5), and a communication medium, are all generic computer elements. Instructing one to “apply” an abstract idea and reciting no more than generic computer elements performing generic computer tasks does not make an abstract idea patent-eligible. *See Alice*, 134 S.Ct. at 2359–60 (holding patent-ineligible claims that “amount to nothing significantly more than an instruction to apply the abstract idea . . . using some unspecified, generic computer” and in which “each step does no more than require a generic computer to perform generic computer functions”

Intellectual Ventures I LLC v. Capital One Bank (USA), 792 F.3d 1363, 1368 (Fed. Cir. 2015); *buySAFE*, 765 F.3d at 1354 (“The Court in *Alice* made clear that a claim directed to an abstract idea does not move into section 101 eligibility territory by ‘merely requir[ing] generic computer implementation.’”).

Appellant’s Specification indicates that “mobile devices” may be cellular phones or mobile phones 117. Spec. ¶¶ 54, 55. The interchange 101 computing device “is configured to communicate with the mobile phones through the different controllers to provide security and convenience for online transactions.” *Id.* ¶¶ 54, 58. The payor source “accounts are hosted on the account servers (125) of financial institutions, such as banks, credit unions, credit card companies, etc.” *Id.* ¶ 62.

Therefore, not only does claim 1 recite these elements generically, but the Specification also describes them in similar terms.

Essentially, Appellant argues that the abstract idea recited in claim 1, namely in-funding based on a phone number to phone number transfer, is a technological improvement. *See* Appeal Br. 18–19. However, “[i]t has been clear since *Alice* that a claimed 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.” *BSG Tech LLC v. Buyseasons, Inc.*, 899 F.3d 1281, 1290 (Fed. Cir. 2018).

Merely reciting an abstract idea in a physical environment, without more, is insufficient to make the abstract idea patent-eligible. *See SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1168 (Fed. Cir. 2018) (“Here, in contrast, the focus of the claims is not a physical-realm improvement but an improvement in wholly abstract ideas—the selection and mathematical analysis of information, followed by reporting or display of the results.”).

Any innovation resides in the realm of the abstract ideas recited in claim 1 rather than in any technical improvement to a particular technology that is integral to the claim. The computing device initiates a funds transfer in response to a request to transfer an amount from an account associated with a source phone number to an account associated with a destination phone number. *RecogniCorp* (“Adding one abstract idea (math) to another abstract idea (encoding and decoding) does not render the claim non-abstract.”); *see also Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (Fed. Cir. 2016) (“a claim for a *new* abstract idea is still an abstract idea.”); *Versata Dev. Grp., Inc. v. SAP Am., Inc.*, 793 F.3d 1306, 1335 (Fed. Cir. 2015) (claims that improved an abstract idea, but not a computer’s performance, were held unpatentable).

Even if we assume that the techniques claimed are “[g]roundbreaking, innovative, or even brilliant,” that is not enough for eligibility. *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 591 (2013); *accord buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1352 (Fed. Cir. 2014). Nor is it enough that a claimed abstract technique is novel and nonobvious over prior art. *SAP Am.*, 898 F.3d at 1162.

McRO and *BASCOM*, cited in the Appeal Brief, support the foregoing analysis and illustrate why claim 1 is not patent-eligible. *See* Appeal Br. 19–22. In *McRO, Inc. v. Bandai Namco Games America Inc.*, 837 F.3d 1299 (Fed. Cir. 2016), the claims recited a specific improvement in the field of computer animation, and, therefore, were not directed to an abstract idea. The process used a combined order of specific rules that render information into a specific format used and applied to create a desired result—a sequence of synchronized, animated characters. *McRO*, 873 F.3d at 1314–15. The claims recited a process of automated lip-synchronization of 3-D characters resulting from a specific order of rules as sub-sequences of phonemes, timing, and weight of visual expression at a particular timing by a morph weight set. *Id.* at 1315; *see SAP Am.*, 898 F.3d at 1167 (“The claims in *McRO* were directed to the creation of something physical—namely, the display of ‘lip synchronization and facial expressions’ of animated characters on screens for viewing by human eyes.”).

Here, receiving, storing, and communicating financial transaction data is not inventive. *See Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016) (using off-the-shelf, conventional computer, network, and display technology to gather, send, and present desired information is not an inventive concept); *see Revised Guidance*, 84 Fed. Reg. at 55 n.31.

The court in *BASCOM* found an inventive concept in an improved filtering tool provided at a central location, remote from end-users, and also customizable with filtering features specific to each end user. This tool thus provided the benefits of a dual filter on an end user’s local computer *and* on an ISP server. *BASCOM Global Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1350 (Fed. Cir. 2016).

Here, claim 1 implements the abstract ideas on generic computers, interfaces, and networks used as tools without improving their functionality. Selecting a financial account by matching a phone number to the associated account is an abstract idea involving methods of organizing human activity discussed above.

For the foregoing reasons, we determine that claim 1 does not integrate the abstract idea identified in Step 2A Prong One above into a practical application.

Do the Claims Include an Inventive Concept?

We next consider whether claim 1 recites any elements, individually, or as an ordered combination, that provide an inventive concept. *Alice*, 573 U.S. at 217–18. “The second step of the *Alice* test is satisfied when the claim limitations involve more than performance of well-understood, routine [and] conventional activities previously known to the industry.” *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1367 (Fed. Cir. 2018) (internal quotations and citation omitted); *see also* Revised Guidance, 84 Fed. Reg. at 56 (explaining that the second step of the *Alice* analysis considers whether a claim adds a specific limitation beyond a judicial exception that is not “well-understood, routine, conventional” activity in the field).

We agree with the Examiner that claim 1 recites generic components and functions of storing, retrieving, processing, and displaying data. Ans. 6; *Elec. Power*, 830 F.3d at 1353–54. The components gather and analyze information of a specified content without inventive technology. Ans. 35.

USPTO Memorandum of April 19, 2018, “Changes in Examination Procedure Pertaining to Subject Matter Eligibility, Recent Subject Matter Eligibility Decision (*Berkheimer v. HP, Inc.*)” (Apr. 19, 2018), available at <https://www.uspto.gov/sites/default/files/documents/memo-berkheimer-20180419.PDF> (*Berkheimer* memo) indicates that the Specification may describe additional elements in a manner indicating that elements are sufficiently well-known that the specification need not describe their particulars to satisfy 35 U.S.C. § 112(a). *Berkheimer* memo at 3–4. This is such a case as discussed above. See Spec. ¶¶ 12, 42–64, Figs. 1–4.

There is nothing unconventional about the “ordered combination” that is not merely the sum of the parts. See *In re TLI Commc’ns Patent Lit. v. AV Automotive, LLC*, 823 F.3d 607, 615 (Fed. Cir. 2016) (holding the “recited physical components behave exactly as expected according to their ordinary use,” through “steps that generically spell out what it means to ‘apply it on a telephone network’ also cannot confer patent eligibility”); *Two-Way Media Ltd. v. Comcast Cable Communications, LLC*, 874 F.3d 1329, 1339 (Fed. Cir. 2017) (“Nothing in the claims or their constructions, including the use of ‘intermediate computers,’ requires anything other than conventional computer and network components operating according to their ordinary functions.”); *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014) (Sequence of receiving, selecting, offering for exchange, display, allowing access, and receiving payment recited an abstraction.); Ans. 7.

We, therefore, determine that claim 1 does not recite any elements, considered individually, or as an ordered combination, that provide an inventive concept sufficient to transform the abstract idea into patent eligible subject matter. Accordingly, we sustain the rejection of claims 1–21.

*Claims 1–4, 8, 9, 11, 13, 14, and 19
Rejected as Anticipated by Hamzeh*

Appellant argues the claims as a group. Appeal Br. 23–30. We select claim 1 as representative. 37 C.F.R. § 41.37(c)(1)(iv). Regarding claim 1, the Examiner sets forth detailed findings explaining how Hamzeh discloses each limitation of claim 1. Final Act. 9–13. The findings include Hamzeh’s disclosure of payment server 306 transferring funds from payor’s account 310 to payee’s account 312 in response to messages from payor’s mobile phone 302 and payee’s mobile phone 304. Hamzeh ¶¶ 6–8, 18–21, Fig. 3.

Appellant argues for each limitation of claim 1 that the account linked to the phone number in Hamzeh is pre-funded, the use accounts are within or held by the system, and there is no “account held by a server of a funding service.” See Appeal Br. 24–30. These arguments are not persuasive.

First, the claimed method obtains funds from an account server of a funding source, which is an existing bank account, credit union account, or credit card account of the payor. See Spec. ¶ 62. Thus, the claimed account of a funding source is pre-funded. Claim 1 does not cover how the funding source account is funded. Intermediary computer 101 also obtains funds from this funded account (*id.* ¶¶ 108, 384, 391) but this feature is not argued.

Like the claimed intermediary computing device, Hamzeh obtains and transfers funds from a payor’s account 310 to an account of a payee who is notified of the transfer. See Hamzeh ¶¶ 6–8, 18–21, 26–30, Figs. 2, 3.

The account held by an account server is “an account server of a funding source” and refers to the server of a financial institution where the payor’s account is located. *See* Spec. ¶ 62. Moreover, to the extent that this argument challenges whether Hamzeh discloses an account server, Levchin, which is applied in rejecting claims 6, 7, and 15, is evidence that financial account servers used to transfer funds are well-known in the art. Levchin, 5:17–6:3, Fig. 1 (server 108). Indeed, Figure 3 of Hamzeh illustrates this well-known technology as intermediary payment server 306 is connected to payor account 310 at a financial institution. Hamzeh ¶¶ 20–22; *see* Ans. 32–33 (discussing Levchin’s teaching of an account server); *see also* *Randall Mfg. v. Rea*, 733 F.3d 1355, 1362 (Fed. Cir. 2013) (Board must consider critical background information that easily explains the knowledge and perspective of a person of ordinary skill in the art).

Hamzeh also associates accounts with users via a mobile device ID or telephone number in a database of payment server 306. Hamzeh ¶¶ 20–22, 26. Hamzeh tracks and stores the amount to be transferred from a payor’s account to the account of a payee via a messaging application using data stored in database 308 as claimed. *Id.* ¶¶ 22–30, Fig. 2 (step 212).

Accordingly, we sustain the rejection of claim 1 and claims 2–4, 8, 9, 11, 13, 14, and 19, which fall with claim 1.

Rejections of Claims 5–7, 10, 12, 15–18, and 21

Appellant argues that claims 5–7, 10, 12, 15–18, and 21 are allowable for at least the same reasons as claim 1 from which they depend. Appeal Br. 31–33. Because we sustain the rejection of claim 1, this argument is not persuasive, and we also sustain the rejection of claims 5–7, 10, 12, 15–18, and 21.

NEW GROUND OF REJECTION

We enter a new ground of rejection of claim 19 as directed to non-statutory subject matter because it recites “[a] computer-readable storage medium storing instruction.” Appeal Br. 39 (Claims App.).

A broadest reasonable interpretation of “computer-readable medium” encompasses *transitory signals*, which are non-statutory subject matter, absent a disclaimer or an express definition in the Specification excluding such signals and transitory matter. *See Ex parte Mewherter*, 107 USPQ2d 1857, 1859–60 (PTAB May 8, 2013) (precedential); *In re Nuijten*, 500 F.3d 1346, 1357 (Fed. Cir. 2007). We find no such disclaimer or definition in the Specification. *See* Spec. ¶¶ 410–412; *see also* U.S. Patent & Trademark Office, *Subject Matter Eligibility of Computer Readable Media*, 1351 Off. Gaz. Pat. Office 212 (Feb. 23, 2010) (“A claim drawn to such a computer readable medium that covers both transitory and non-transitory embodiments may be amended to narrow the claim to cover only statutory embodiments to avoid a rejection under 35 U.S.C. § 101 by adding the limitation ‘non-transitory’ to the claim.”); *see also* U.S. Patent & Trademark Office, *Evaluating Subject Matter Eligibility Under 35 USC § 101* (August 2012 Update) (pp. 11–14), available at http://www.uspto.gov/patents/law/exam/101_training_aug2012.pdf (noting that while “non-transitory” is a viable option for overcoming the presumption the media encompass signals or carrier waves, merely indicating such media are “physical” or “tangible” will not overcome such presumption); *Nuijten*, 500 F.3d at 1353, 1357 (physical properties of signal with tangible causes and effects are not directed to statutory subject matter).

CONCLUSION

Claims Rejected	35 U.S.C. §	Reference(s)/ Basis	Affirmed	Reversed	New Ground
1–19, 21	101	Patent-Eligibility	1–19, 21		
19	101	Patent-Eligibility			19
1–4, 8, 9, 11, 13, 14, 19	102(b)	Hamzeh	1–4, 8, 9, 11, 13, 14, 19		
5	103(a)	Hamzeh, Official Notice	5		
6, 7, 15	103(a)	Hamzeh, Levchin	6, 7, 15		
10, 12, 21	103(a)	Hamzeh, Pousti	10, 12, 21		
16	103(a)	Hamzeh, Milberger	16		
17, 18	103(a)	Hamzeh, Milberger, Chong	17, 18		
Overall Outcome			1–19, 21		19

This decision contains a new ground of rejection entered pursuant to 37 C.F.R. § 41.50(b). Section 41.50(b) provides that “[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review.” Section 41.50(b) also provides:

When the Board enters such a non-final decision, the appellant, within two months from the date of the decision, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

(1) *Reopen prosecution.* Submit an appropriate amendment of the claims so rejected or new Evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the prosecution will be remanded to the examiner. The new ground of rejection is binding upon the examiner unless an amendment or new Evidence not previously of Record is made which, in the opinion of the examiner, overcomes the new ground of rejection designated in the decision. Should the examiner reject the claims, appellant may again appeal to the Board pursuant to this subpart.

(2) *Request rehearing.* Request that the proceeding be reheard under § 41.52 by the Board upon the same Record. The request for rehearing must address any new ground of rejection and state with particularity the points believed to have been misapprehended or overlooked in entering the new ground of rejection and also state all other grounds upon which rehearing is sought.

Further guidance on responding to a new ground of rejection can be found in the MANUAL OF PATENT EXAMINING PROCEDURE § 1214.01 (9th Ed., Rev. 08.2017, Jan. 2018).

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; 37 C.F.R. § 41.50(b)