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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* MICHELLE HAROLD, MARK BREUR, and  
JOHN F. TANGREDI

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Appeal 2018-007578  
Application 14/494,267  
Technology Center 3600

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Before KRISTEN L. DROESCH, JENNIFER S. BISK, and  
JULIET MITCHELL DIRBA, *Administrative Patent Judges*.

DROESCH, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

STATEMENT OF THE CASE

Appellant<sup>1</sup> requests rehearing under 37 C.F.R. § 41.52 of the Decision on Appeal entered September 30, 2019 (“Decision,” “Dec.”) affirming the Examiner’s rejection of claims 1–21 under 35 U.S.C. § 101.

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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 indicates the real party-in-interest is INSPERITY SERVICES, L.P. App. Br. 2.

### CLAIMED SUBJECT MATTER

Claim 1, which is representative of the subject matter of the appeal and is reproduced from the Claims Appendix of the Appeal Brief, reads as follows:

1. A method for providing an automated transfer of funds, comprising:
  - receiving data relating to an unused amount of funds in an account associated with a first payment mechanism, the unused funds having been deposited in the account associated with the first payment mechanism by a third party;
  - determining if a user of a second payment mechanism has a pending request for funding from the third party;
  - transferring at least a portion of said unused amount of funds from said account associated with said first payment mechanism to an account associated with the second payment mechanism in response to determining that said user of said second payment mechanism has a pending request for funding from the third party; and
  - transferring at least a portion of said unused amount of funds from said account associated with said first payment mechanism to a master account in response to determining that said user of said second payment mechanism does not have a pending request for funding from the third party.

### SUMMARY OF THE DECISION ON REHEARING

In the Decision, we affirmed the Examiner’s rejection of claims 1–21 under 35 U.S.C. § 101. Specifically, in concluding that the claims are not patent eligible under 35 U.S.C. § 101, we found that claim 1 recites a judicial exception—a fundamental economic practice, which is one of certain methods of organizing human activity identified in the Guidance, and thus, an abstract idea. *See* Dec. 8–10. We further determined that the additional elements of claim 1 (i.e., “receiving data . . .” and “automated”) do not integrate the judicial exception into a practical application. *See id.* at

10–13. Finally, we also determined the additional elements, individually, or as an ordered combination, do not provide an inventive concept. *See id.* at 13–15.

### THE REQUEST FOR REHEARING

Appellant seeks reconsideration of the Decision affirming the rejection of claims 1–21 under 35 U.S.C. § 101. Appellant argues that the Board failed to consider evidence urged by Appellant that the operation of the computer is improved by virtue of the claimed method and apparatus. *See* Appellant’s Request for Reconsideration, filed December 2, 2019 (“Req. Reh’g”) 2. Appellant also argues the Board incorrectly concluded that the claims do not improve the functioning of a computer or other technology.

### STANDARD OF REVIEW

A request for rehearing must state with particularity the points believed to have been misapprehended or overlooked. 37 C.F.R. § 41.52(a)(1). Arguments not raised in the briefs before the Board are not permitted in the request for rehearing except as permitted by paragraphs (a)(2) through (a)(4). *See id.* New argument based upon a recent relevant decision of either the Board or a Federal Court may be presented. 37 C.F.R. § 41.52(a)(2).

### DISCUSSION

Appellant argues that the Board failed to consider evidence urged by Appellant that the operation of the computer is improved by virtue of the claimed method and apparatus. *See* Req. Reh’g 2, 6 (citing 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 54–55 (USPTO Jan. 7, 2019) (“Revised Guidance”)). Appellant argues that the Appeal Brief provided a description of each claim with citations to the specification where

each element of the claims was set forth and described in context with other elements of each claim, and set forth an exemplary operation of the system that necessarily flows from the description and claims set forth in the cited portions of the Specification. *See* Req. Reh’g 3–5 (quoting Appeal Br. 2, section entitled “Summary of Claimed Subject Matter,” *id.* at 13–14).

Appellant contends the quoted “exemplary explanation is entirely supported by the Specification as a whole, including each of the paragraphs identified above (and in Appellant’s Amended Appeal Brief) with particular attention to paragraphs [0021], [0028], [0068], [0071], [0078-0079].” *Id.* at 5.

Appellant contends that “[t]he notion that the claimed method results in half the number of funds transfers necessarily flows from the very language of the claims and is further supported by the description . . . in the [S]pecification, as identified in Appellant’s Amended Appeal Brief.” *Id.*

Appellant further disagrees with the Board’s characterization of Appellant’s arguments as attorney argument. *See* Req. Reh’g. 5. Appellant contends that Appellant correctly identifies and describes the claimed operation of the funding process and what necessarily flows therefrom. *See id.* Appellant asserts that what necessarily flows from the described and claimed funding process is that previously, two transactions were required to complete the funding process, whereas only a single transaction is required using the claimed process, which is necessarily faster than performing two transactions. *See id.* Appellant contends “[t]his is not attorney argument; it is a fact to which no countervailing facts or arguments were provided by the Board.” *See id.* Appellant argues “the Board simply rejects Appellant’s position out-of-hand without stating any reason.” *See id.* (citing Dec. 14). Appellant further contends “[t]he Board never identifies how any statement

made by Appellant is incorrect, or more importantly why the Board disagrees.” *Id.* at 5–6.

Appellant’s arguments on Rehearing do not persuade us that we misapprehended or overlooked arguments in the Appeal Brief and/or Reply Brief. Appellant’s Request for Rehearing expresses disagreement with a misunderstanding of the Decision, as demonstrated by Appellant’s arguments which focus on the Specification disclosing a reduction in the number of transfers for funds reallocation (*see* Req. Reh’g 3–6). In contrast to Appellant’s understanding, in the Decision we considered the following arguments: (1) embodiments described in the claims “reduce the number of transfers so that funding may occur automatically and efficiently to achieve real time or near real time funding . . . reducing the number of transactions by up to 50%,” (2) “the process will experience a dramatic (*i.e.*, 100%) boost in operating speed,” and (3) “[w]ithout Appellant’s contribution, software for controlling transfers would be substantially slower such that real time or near real time transfers would not be achievable.” Dec. 12 (citing App. Br. 13–14; Reply Br. 7). In other words, we considered Appellant’s arguments linking a reduced number of transfers to achieving real time or near real time funding, a dramatic boost in operating speed, and the achievement of real time or near real time transfers compared to substantially slower operations using a conventional or non-reduced number of transfers. *See id.* at 12–13. And we explained that we considered these arguments to be attorney arguments because Appellant did not direct us to evidence, such as the Specification, to support Appellant’s asserted links. *See id.* at 12–13. As Appellant admits, these arguments are an “exemplary explanation.” *See id.* at 5.

To the extent that Appellant points out certain paragraphs cited in the “Summary of the Claimed Subject Matter” section of the Appeal Brief, Appellant does point out where in the Appeal Brief and/or Reply Brief, that Appellant asserted that paragraphs 8, 20, 28, 78, 79, and 86 of the Specification disclose a reduced number of transfers is linked to achieving real time or near real time funding, a dramatic boost in operating speed, and real time or near real time transfers compared to substantially slower operations using a conventional or non-reduced number of transfers. Paragraphs 8, 20, 28, 78, 79, and 86 of the Specification provide no such links, and instead summarize the disclosed subject matter and the types of remote devices that may be used, and explain the flow chart depicted in Figure 7 for reallocating funds. *See Spec.* ¶¶ 2, 8, 20, 28, 78, 79, 86.

In support of the Request for Rehearing, Appellant also cites paragraphs 21, 68, 71, and 88 of the Specification, but Appellant does not direct us to where in the Appeal Brief and/or Reply Brief these paragraphs of the Specification were addressed previously. *See Req. Reh’g* 5 (citing *Spec.* ¶¶ 21, 28, 68, 71, 78–79, 88). We cannot misapprehend or overlook evidence that was not presented previously. In any event, paragraphs 21, 68, 71, and 88 of the Specification also do not disclose that a reduced number of transfers is linked to achieving real time or near real time funding, a dramatic boost in operating speed, and real time or near real time transfers compared to substantially slower operations using a conventional or non-reduced number of transfers. Paragraphs 21, 68, 71, and 88 instead disclose the following: (1) the funds reallocation process may be made automatically on a periodic basis, when a funds request is detected, or upon receipt of an instruction; (2) an accounting unit requesting transfer and/or reallocation of

funds by communicating the request to a funds transfer unit, and the reallocation of funds in response to detecting a request; (3) a funds transfer unit may relay a request for reallocation to a reallocation unit; and (4) an apparatus of similar scope to the apparatus described in claim 9. *See Spec.* ¶¶ 21, 68, 71, 88.

Appellant also contends the Board incorrectly concluded that the claims do not improve the function of a computer or other technology. *See* Req. Reh’g 2 (citing Dec. 13). Appellant asserts the Board’s conclusion rests on its interpretation of *OIP Techs.*, which, according to Appellant, is contrary to the more recent Federal Circuit decision in *Trading Techs. Int’l v. CQG, Inc.*, 675 Fed. Appx. 1001, 1006 (Fed. Cir. 2017). Appellant argues “that improving the efficient transfer of funds between payment mechanisms within an organization to provide funding on a real time or near real time basis plainly improves the functioning of the computer in much the same way the Federal Circuit found improved operation of a computer in *Trading Techs.[.] Int’l* where the [c]ourt held that ‘[t]he patents are for a method and system for reducing the time it takes for a trader to place a trade when electronically trading on an exchange.’” *Id.* (citing *Trading Techs.* at 3); *see id.* at 3 (arguing the improvement by the invention in the present claims is parallel to the improvement of the computer operation in *Trading Techs.*). According to Appellant, *Trading Techs.* establishes that software that reduces the time to complete a financial transaction improves the functioning of a computer and is eligible subject matter. *See id.* at 2. On the foregoing bases, Appellant contends that because the Federal Circuit in *Trading Techs.* recognized that improving the speed at which electronic trade may be completed improves the functioning of the computer, it must

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necessarily follow that improving the speed at which electronic funding is completed also improves the functioning of the computer. *See id.* at 3.

We are not persuaded that Rehearing should be granted based on Appellant's new arguments relying on *Trading Techs.* Appellant filed its Appeal Brief on March 3, 2018, citing *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed Cir. 2016) and *McRO Inc. v. Bandai Namco Games Amer. Inc.*, 837 F.3d 1299 (Fed. Cir. 2018) to support its argument that the application is directed to a solution in the software arts and a technological problem, not an abstract idea. *See* Appeal Br. 12–15. Although new argument based upon a recent relevant decision may be presented on rehearing (*see* 37 C.F.R. § 41.52(a)(2)), Appellant does not explain why *Trading Techs.* should be considered a recent relevant decision under 37 C.F.R. § 41.52(a)(2) and, thus, the basis for new arguments. *Trading Techs.* was entered in 2017, and predates both the March 3, 2018 filing of the Appeal Brief and the 2018 *McRO* decision cited therein. Appellant could have presented arguments in the Appeal Brief and/or Reply Brief based on *Trading Techs.*, but did not do so. A decision of either the Board or a Federal Court, newly discovered by an appellant, is not a proper basis for presenting new arguments in a request for rehearing.

For all of the foregoing reasons, Appellant's Request for Rehearing is denied.

CONCLUSION

Appellant's Request for Rehearing is DENIED.

In summary,

Outcome of Decision on Rehearing:

<b>Claims</b>	<b>35 U.S.C. §</b>	<b>Basis</b>	<b>Denied</b>	<b>Granted</b>
1-21	101	Eligibility	1-21	
<b>Outcome</b>			1-21	

Final Outcome of Appeal after Rehearing:

<b>Claims</b>	<b>35 U.S.C. §</b>	<b>Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1-21	101	Eligibility	1-21	
1-21	112	Written Description		1-21
<b>Outcome</b>			1-21	

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).

DENIED