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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MARY ANN GILBERT, JOAN KIRWIN and MARY K. TSELEPIS

Appeal 2018-008064
Application 10/113,841[1]
Technology Center 3600

Before JOSEPH A. FISCHETTI, BIBHU R. MOHANTY, and MICHAEL C. ASTORINO, *Administrative Patent Judges*.

FISCHETTI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant appeals from the Examiner's decision to reject claims 175−192 and 194−205. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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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 BGC Partners, Inc. Appeal Br. 3.

THE INVENTION

Appellant states "the present invention relates to systems and methods for rule-based bilateral negotiation of quotes in response to request for quotes." Spec. ¶2.

Claim 175, reproduced below, is representative of the subject matter on appeal.

> 175. A method comprising:
>
> processing, at a monitoring server of an electronic trading system, a set of rules for trading in a market on the electronic trading system, the electronic trading system programmed to permit rules to vary for different markets on the electronic trading system, and programmed to
> apply different rule sets to different markets;
>
> processing, at the monitoring server of the electronic trading system, an order for an instrument traded in the market to which the received rules apply, the order having been entered into the electronic trading system at a graphical user interface of a computer by an initiating trader;
>
> responsive to processing the order, causing, by a routing server of the electronic trading system, the order to be made available at a graphical user interface of a computer of at least one counterparty trader in the market on the electronic trading system;
>
> by the routing server of the electronic trading system, communicating negotiating information between the initiating trader and a responding one of the counterparty traders;
>
> by the routing server of the electronic trading system, identifying all requesting connections of computers associated with traders and connections of computers associated with market participants and corresponding address information associated with the computers to enable execution of a filtering process to selectively distribute data representing the negotiating information over a network;
>
> by the routing server of the electronic trading system, in response to determining all negotiating information is intended for all market participants, generating electronic signals to generate commands for instructing an electronic management facility system to

cause to execute a filtering process to selectively distribute data representing the negotiating information to a broad market server over a network for subsequent processing;

by the routing server of the electronic trading system, in response to determining negotiating information is intended for select group of market participants, generating electronic signals to generate commands for instructing an electronic management facility system to cause to execute a filtering process to selectively distribute data representing the negotiating information to applicable market group servers over a network for subsequent processing;

by a control server of the electronic trading system, automatically monitoring the communicated negotiation information for breach of the rules applicable to the market for the instrument on the electronic trading system to govern traders' conduct in the market on the electronic trading system;

responsive to the monitoring, detecting, by the control server of the electronic trading system, conduct by a one of the traders that breaches one of the rules of the applicable rules for the market, determining whether a penalty is defined for the breach; and responsive to determining that a penalty is defined for the breach, applying, by the control server of the electronic trading system, the penalty against the trader whose conduct constituted the breach

THE REJECTION

Claims 175−192 and 194−205 are rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

FINDINGS OF FACT

We adopt the Examiner's findings as set forth on pages 2–7 in the Final Office Action[2] and on pages 3–5 in the Examiner's Answer.

[2] All references to the Final Office Action refer to the Final Office Action mailed on December 19, 2017.

35 U.S.C. § 101 REJECTION

We will affirm the rejection of claims 175−192 and 194−205 under 35 U.S.C. § 101.

The Appellant argues claims 175−192 and 194−205 as a group. (Appeal Br. 9). We select claim 175 as the representative claim for this group, and so the remaining claims stand or fall with claim 175. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2015).

An invention is patent-eligible if it claims a "new and useful process, machine, manufacture, or composition of matter." 35 U.S.C. § 101. However, the Supreme Court has long interpreted 35 U.S.C. § 101 to include implicit exceptions: "[l]aws of nature, natural phenomena, and abstract ideas" are not patentable. *E.g.*, *Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208, 216 (2014).

In determining whether a claim falls within an excluded category, we are guided by the Supreme Court's two-step framework, described in *Mayo* and *Alice*. *Alice*, 573 U.S. at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–77 (2012)). In accordance with that framework, we first determine what concept the claim is "directed to." *See id.* at 219 ("On their face, the claims before us are drawn to the concept of intermediated settlement, *i.e.,* the use of a third party to mitigate settlement risk."); *see also Bilski v. Kappos*, 561 U.S. 593, 611 (2010) ("Claims 1 and 4 in petitioners' application explain the basic concept of hedging, or protecting against risk.").

Concepts determined to be abstract ideas, and thus patent ineligible, include certain methods of organizing human activity, such as fundamental economic practices (*Alice*, 573 U.S. at 219–20; *Bilski*, 561 U.S. at 611);

mathematical formulas (*Parker v. Flook*, 437 U.S. 584, 594–95 (1978)); and mental processes (*Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)). Concepts determined to be patent eligible include physical and chemical processes, such as "molding rubber products" (*Diamond v. Diehr*, 450 U.S. 175, 191 (1981)); "tanning, dyeing, making water-proof cloth, vulcanizing India rubber, smelting ores" (*id.* at 182 n.7 (quoting *Corning v. Burden*, 56 U.S. 252, 267–68 (1853))); and manufacturing flour (*Benson*, 409 U.S. at 69 (citing *Cochrane v. Deener*, 94 U.S. 780, 785 (1876))).

In *Diehr*, the claim at issue recited a mathematical formula, but the Supreme Court held that "[a] claim drawn to subject matter otherwise statutory does not become nonstatutory simply because it uses a mathematical formula." *Diehr*, 450 U.S. at 187; *see also id.* at 191 ("We view respondents' claims as nothing more than a process for molding rubber products and not as an attempt to patent a mathematical formula."). Having said that, the Supreme Court also indicated that a claim "seeking patent protection for that formula in the abstract . . . . is not accorded the protection of our patent laws, . . . and this principle cannot be circumvented by attempting to limit the use of the formula to a particular technological environment." *Id.* (citing *Benson* and *Flook*); *see, e.g.*, *id.* at 187 ("It is now commonplace that an *application* of a law of nature or mathematical formula to a known structure or process may well be deserving of patent protection.").

If the claim is "directed to" an abstract idea, we turn to the second step of the *Alice* and *Mayo* framework, where "we must examine the elements of the claim to determine whether it contains an 'inventive concept' sufficient to 'transform' the claimed abstract idea into a patent-

eligible application." *Alice*, 573 U.S. at 221 (quotation marks omitted). "A claim that recites an abstract idea must include 'additional features' to ensure 'that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].'" *Id.* (alterations in original) (quoting *Mayo*, 566 U.S. at 77). "[M]erely requir[ing] generic computer implementation[] fail[s] to transform that abstract idea into a patent-eligible invention." *Id.*

The PTO recently published revised guidance on the application of § 101. 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) ("Guidance"). Under the Guidance, we first look to whether the claim recites:

> (1) any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human activity such as a fundamental economic practice, or mental processes); and
>
> (2) additional elements that integrate the judicial exception into a practical application (*see* Manual of Patent Examining Procedure ("MPEP") § 2106.05(a)–(c), (e)–(h)).

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, do we then look to 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.

See Guidance.

The U.S. Court of Appeals for the Federal Circuit has explained that "the 'directed to' inquiry applies a stage-one filter to claims, considered in light of the [S]pecification, 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 Enfish*, 822 F.3d at 1335–36.

In so doing, as indicated above, we apply a "directed to" two prong test: 1) evaluate whether the claim recites a judicial exception, and 2) if the claim recites a judicial exception, evaluate whether the claim "appl[ies], rel[ies] on, or use[s] 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." Guidance at 53; *see also* MPEP § 2106.05(a)–(c), (e)–(h).

The Specification states:

> In financial and commodities transactions, buyers and sellers may negotiate a final price. Absent the opportunity to negotiate a final price, buyers and sellers may seek other potential buyers and sellers to execute desired trading transactions.
>
> Historically, the negotiation process between buyers and sellers has been conducted through telephone conversations, either directly or through an intermediary party (e.g., a broker). Due to the inefficiency and high probability of error in such a negotiation process, there exists a need in the market to support electronic interaction of buyers and sellers that emulates a voice request for a final price.

Specification ¶¶ 3, 4.

The Specification further describes request for a quote (RFQ) process as:

> The market participant, upon receiving the RFQ from the requesting trader, may elect to respond to the RFQ with a quote or ignore the request. A negotiation session may be initiated

> when the market participant submits a quote in response to the RFQ. When the requesting trader receives a quote in response to their posted RFQ, the requesting trader may exercise various options. The requesting trader may elect to accept the quote, reject the quote without offering a counter-quote, or reject the quote and offer a counter–quote.
>
> The negotiation session may be rule-based. Different markets (e.g., a bond market) may exercise different sets of rules. The rules associated with a particular market, in which the RFQ for an instrument is being transacted, may regulate the negotiation process between the requesting trader and market participant. Regulation of the negotiation process may help to deter unfair negotiation. Furthermore, unfair negotiation practiced by either a requesting trader or a market participant may be subject to a penalty.

Specification ¶¶ 10, 11.

The Field of the Invention states it is a system and method "for bilateral off–market trading." Specification ¶ 2.

Understood in light of the Specification, claim 175, recites, in pertinent part, the abstract ideas of:

> processing,…a set of rules for trading in a market . . . permit[ing] rules to vary for different markets . . .and . . . apply[ing] different rule sets to different markets; processing, . . ., an order for an instrument traded in the market to which the received rules apply, the order having been entered . . . by an initiating trader; responsive to processing the order, causing, . . . the order to be made available . . . [to] at least one counterparty trader in the market . . . ; . . . communicating negotiating information between the initiating trader and a responding one of the counterparty traders; . . . identifying all requesting connections… associated with traders and connections . . . associated with market participants and corresponding address information associated with the computers to enable execution of a filtering process to selectively distribute data representing the negotiating information . . . ; . . . in response to determining all negotiating information is intended for all market

> participants, generating . . . commands … to execute a filtering process to selectively distribute data representing the negotiating information . . . for subsequent processing; . . . ., in response to determining negotiating information is intended for select group of market participants, . . . generat[ing] commands . . . to execute a filtering process to selectively distribute data representing the negotiating information to applicable market group[s] . . . for subsequent processing; . . . monitoring the communicated negotiation information for breach of the rules applicable to the market for the instrument . . . to govern traders' conduct in the market…; responsive to the monitoring, detecting, . . . conduct by a one of the traders that breaches one of the rules of the applicable rules for the market, determining whether a penalty is defined for the breach; and responsive to determining that a penalty is defined for the breach, applying, . . . , the penalty against the trader whose conduct constituted the breach.

The Examiner determined that "Claim 175 is directed to the abstract idea of monitoring negotiation between traders and determining if one of the trader's conduct breaches one of the applicable rules for the market." (Final Act. 2).

We agree and find for ourselves that claim 175 recites a process for bilateral off–market trading using rules applicable to the market for the instrument being traded so as to monitor the communicated negotiation information for breach of the rules. Orderly and lawful negotiations of market instruments is vital to economic prosperity because it deters fraud and encourages open free market practices. The patent-ineligible end of the spectrum includes fundamental economic principles. *Alice*, 573 U.S. at 220. Fundamental economic principles or practices are certain methods of organizing human activity. Guidance, 84 Fed. Reg. 52. Our finding here is consistent with the Examiner's characterization of claim 175, with the

Specification and the claim language as set forth above as intrinsic evidence.

In addition, we find that claim 175 also recites,

> enabl[ing] execution of a filtering process to selectively distribute data representing the negotiating information . . . ; . . ., in response to determining all negotiating information is intended for all market participants, generating . . . commands for instructing an electronic management facility system to execute a filtering process to selectively distribute data representing the negotiating information . . . for subsequent processing; . . ., in response to determining negotiating information is intended for select group of market participants.

These steps recite a mental process. Concepts performed in the human mind are mental processes because the steps of receiving, transmitting, storing, and analyzing data mimic human thought processes of observation, evaluation, judgment, and opinion, perhaps with paper and pencil, where the data interpretation is perceptible only in the human mind. *See In re TLI Commc'ns LLC Patent Litig.*, 823 F.3d 607, 611 (Fed. Cir. 2016); *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093–94 (Fed. Cir. 2016). Filtering to selectively distribute data is an abstract idea. See *Bascom Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1348–49 (Fed. Cir. 2016) ("filtering content is an abstract idea because it is a longstanding, well-known method of organizing human behavior, similar to concepts previously found to be abstract." *Id.* at 1348). In *Trading Tech. v. IBG, LLC*, 921 F.3d 1084, 1089 it was held that claims directed to a financial trading method used by a computer were not patent eligible. Mental processes and certain methods of organizing human behavior are enumerated judicial exceptions. Guidance, 84 Fed. Reg. 52.

Turning to the second prong of the "directed to" test, claim 1 only generically requires "monitoring," "routing," "market," and "control servers," "a graphical user interface," "an electronic trading system," and "an electronic management facility system." These components are described in the Specification at a high level of generality. *See* Spec. ¶¶ 23–30, 35, 36, Fig. 1. We fail to see how the generic recitations of these most basic computer components and/or of a system so integrates the judicial exception as to "impose[] a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception."

Thus, we find that the claims recite judicial exceptions of a mental process and a certain method of organizing human activity that are not integrated into a practical application.

That the claims do not preempt all forms of the abstraction or may be limited to traded market instruments, does not make them any less abstract. *See OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015) ("And that the claims do not preempt all price optimization or may be limited to price optimization in the e-commerce setting do not make them any less abstract.").

Turning to the second step of the *Alice* analysis, because we find that the claims are directed to abstract ideas/judicial exceptions, the claims must include an "inventive concept" in order to be patent-eligible, i.e., there must be an element or combination of elements sufficient to ensure that the claim in practice amounts to significantly more than the abstract idea itself. *See Alice*, 573 U.S. at 217–18 (quoting *Mayo Collaborative Servs.*, 566 U.S. at 72–73).

Concerning this step the Examiner found the following:

> When the limitations are considered as an ordered combination, it do not add anything further than when the limitations are considered individually since the additional limitations are simply applying the abstract idea on a computer. The ordered combination does not appear to improve the functioning of the computer itself or provide improvements to another technology or technical field. Thus, the additional limitations as an ordered combination do not amount to a claim as a whole that is significantly more than the abstract idea. Hence, the claim 175 is directed to an abstract idea.

Final Act. 4–5.

We agree with the Examiner. "[T]he relevant question is whether the claims here do more than simply instruct the practitioner to implement the abstract idea . . . on a generic computer." *Alice*, 573 U.S. at 225. They do not.

Taking the claim elements separately, the function performed by the computer at each step of the process is purely conventional. Using a computer to process, respond, route, communicate, identify, determine, and apply decision criteria to data based on rules amounts to electronic data query and retrieval—one of the most basic functions of a computer. All of these computer functions are well-understood, routine, conventional activities previously known to the industry. *See Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016); *see also In re Katz Interactive Call Processing Patent Litig.*, 639 F.3d 1303, 1316 (Fed. Cir. 2011) ("Absent a possible narrower construction of the terms 'processing,' 'receiving,' and 'storing,' . . . those functions can be achieved by any general purpose computer without special programming"). In short, each step does no more than require a generic computer to perform generic

computer functions. The claims do not, for example, purport to improve the functioning of the computer itself. In addition, as we stated above, the claims do not affect an improvement in any other technology or technical field. The Specification spells out different generic equipment and parameters that might be applied using this concept and the particular steps such conventional processing would entail based on the concept of information access under different scenarios (*see, e.g.*, Spec. ¶¶ 23–30, 35, 36, Fig. 1.). Thus, the claims at issue amount to nothing significantly more than instructions to apply the abstract idea using some unspecified, generic computer. Under our precedents, that is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 573 U.S. at 225–226.

Considered as an ordered combination, the computer components of Appellant's claims add nothing that is not already present when the steps are considered separately. The sequence of data reception-analysis (process, respond, route, communicate, identify, determine, and apply decision criteria to data based on rules) and storing is equally generic and conventional or otherwise held to be abstract. *See 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), *Inventor Holdings, LLC v. Bed Bath & Beyond, Inc.*, 876 F.3d 1372, 1378 (Fed. Cir. 2017) (holding that sequence of data retrieval, analysis, modification, generation, display, and transmission was abstract), *Two-Way Media Ltd. v. Comcast Cable Commc'ns, LLC*, 874 F.3d 1329, 1339 (Fed. Cir. 2017) (holding sequence of processing, routing, controlling, and monitoring was abstract). The ordering of the steps is, therefore, ordinary and conventional.

We have reviewed all the arguments Appellant have submitted concerning the patent eligibility of the claims before us that stand rejected under 35 U.S.C. § 101. (App. Br. 10–18, Reply Br. 2–6). We find that our analysis above substantially covers the substance of all the arguments, which have been made. But, for purposes of completeness, we will address various arguments in order to make individual rebuttals of same.

Appellant argues:

> the claimed subject matter provides improved techniques by **communicating to a graphical user interface and having the routing server generate electronic signals to generate commands for instructing an electronic management facility system to cause to execute a filtering process to selectively distribute data representing the negotiating information to a broad market server or an applicable market server over a network for subsequent processing.**

(Appeal Br. 14).

We are not persuaded by Appellant because filtering to selectively distribute data is an abstract idea. See *Bascom Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1348–49 (Fed. Cir. 2016) ("filtering content is an abstract idea because it is a longstanding, well-known method of organizing human behavior, similar to concepts previously found to be abstract." *Id.* at 1348).

We further disagree with Appellant that the decision in *Core Wireless Licensing S.A.R.L. v. LG Electronics MobileComm U.S.A., Inc., 880 F.3d 1356* (Fed. Cir. 2018) "<u>does uniquely match the facts of the present case.</u>" (Appeal Br. 15). Problematic to Appellant's position is that the quote which Appellant presents on page 15 in its brief omits the claim details identified by the *Core Wireless Licensing S.A.R.L.* court as determinative in its patent eligibility analysis of the claims before it as follows:

> Claim 1 of the '476 patent requires "an application summary that can be reached directly from the menu," specifying a particular manner by which the summary window must be accessed. The claim further requires the application summary window list a limited set of data, "each of the data in the list being selectable to launch the respective application and enable the selected data to be seen within the respective application." This claim limitation restrains the type of data that can be displayed in the summary window. Finally, the claim recites that the summary window "is displayed while the one or more applications are in an un-launched state," a requirement that the device applications exist in a particular state.

Core Wireless, 880 F.3d at 1362–1363. Nowhere in independent claim 175 before us here is there the specificity which the *Core Wireless* decision exacts relevant. That is, the graphical user interface recited in appealed claim 175 is at best recited inferentially and without any more detail except as being where the order was entered. Whereas, in *Core Wireless*, for example, the menu feature directly presented an application summary where applications in a list were selectively launched.

As described above, the only claim elements beyond the abstract idea are the "monitoring," "routing," "market," and "control servers," "a graphical user interface," "an electronic trading system," and "an electronic management facility system." Appellant cannot reasonably deny, nor does Appellant show otherwise, that the 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 175 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 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 v. HP Inc.*, 890 F.3d 1369, 1373 (Fed. Cir. 2018).

Again, even if the advance over the prior art is to a "**filtering process to selectively distribute data representing the negotiating information to a broad market**" (Appeal Br. 14), that purported advance is an abstract idea itself, i.e., parsing information, is nevertheless a mental process similar to hedging against financial risk in *Bilksi*, 561 U.S. at 609, and collecting and analyzing investment data in *SAP America*, 898 F.3d at 1167–68, using conventional technology. Filtering to selectively distribute data is an abstract idea. *See Bascom Global Internet Services, Inc.,* 827 F.3d 1341. The alleged improvement lies in the abstract idea itself, not to any technological improvement. *See BSG Tech LLC v. Buyseasons, Inc.*, 899 F.3d 1281, 1287–88 (Fed. Cir. 2018). "[A]fter *Alice*, there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible. The bare fact that a computer exists in the physical rather than purely conceptual realm is beside the point." *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014) (internal citations and quotation marks omitted).

That "**communicating to a graphical user interface and** using **the routing server** to **selectively** control the **amount** of information **and** the **destination**," may improve computer performance (Appeal Br. 18), is not

dispositive. Although the claims purport to accelerate the process of bilateral off–market trading using rules applicable to the market for the instrument being traded, our reviewing court has held that speed and accuracy increases stemming from the ordinary capabilities of a general purpose computer "do[] not materially alter the patent eligibility of the claimed subject matter." *Bancorp Servs., L.L.C. v. Sun Life Assurance Co. of Can. (U.S.)*, 687 F.3d 1266, 1278 (Fed. Cir. 2012). Directing information to specific users based on rules based permissions, albeit via a server and GUI interface, is still a mental process. We as humans do it all the time with our memory, parsing information to those who we feel the information needs to be directed. A claim for a new abstract idea is still an abstract idea." *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (citing Mayo, 566 U.S. at 90).

Finally, Appellant argues, "The lack of prior art citations in the Final Action indicate that the claimed subject matter allows the computer to perform a novel and non-obvious function that was not previously performable by computers." (Appeal Br. 20).

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). *See also 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.").

CONCLUSIONS OF LAW

We conclude the Examiner did not err in rejecting claims 175−192 and 194−205 under 35 U.S.C. § 101.

DECISION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
175−192, 194−205	101	Eligibility	175−192, 194−205	

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