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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte TIMOTHY A. MUSGROVE, ROBIN HIROKO WALSH, and
RUSSELL GILCHRIST

Appeal 2018-008150
Application 14/262,049
Technology Center 3600

Before JOSEPH L. DIXON, JAMES R. HUGHES, and
STEPHEN E. BELISLE, *Administrative Patent Judges*.

HUGHES, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision rejecting claims 1, 8–11, 13, 14, 20–23, and 25–29. Claims 2–7, 12, 15–19, and 24 have been canceled. *See* Appeal Br. 2.² We have jurisdiction under 35 U.S.C. § 6(b).

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 CBS Interactive Corp. *See* Appeal Br. 2.

² We refer to Appellant's Specification (“Spec.”), filed Apr. 25, 2014 (claiming benefit of US 13/298,085 (filed Nov. 16, 2011); US 12/217,095 (filed July 1, 2008); and US 10/265,189 (filed Oct. 7, 2002); Appeal Brief (“Appeal Br.”), filed Apr. 22, 2018; and Reply Brief (“Reply Br.”), filed

We AFFIRM.

CLAIMED SUBJECT MATTER

The claims in this patent application generally relate to rating multiple products and, more particularly, to apparatuses “and methods that allow rating of plural products based on their attributes.” Spec. ¶ 2; *see* Spec. ¶¶ 9–12 and Abstract. Claims 1 and 14 are independent. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method implemented by at least one computing device for rating plural items comprising the steps of:

[A] identifying, by the at least one computing device, a set of attributes associated with the items;

[B] receiving, by the at least one computing device, plural data sets, each data set including values of the set of attributes for a specified item;

[C] applying, by the at least one computing device, a scalar structure to item attribute values of the items to provide a scalar value corresponding to each attribute value for each specified item;

[D] determining, by the at least one computing device, a competitive index for one or more of the item attributes based on the scalar values, wherein the competitive index for each of the one or more item attributes comprises an average of a maximum percentile rank and a minimum percentile rank of a percentile rank range associated with a scalar value corresponding to that item attribute in an ordered list of the scalar values, wherein the maximum percentile rank and the minimum percentile rank are not the same for the percentile rank range;

Aug. 10, 2018. We also refer to the Examiner’s Final Office Action (“Final Act.”), mailed Jan. 23, 2018; and Answer (“Ans.”) mailed July 31, 2018.

[E] the at least one computing device at least one of rating and pricing each item based on the competitive index to create item results; and

[F] transmitting, by the at least one computing device, the item results to be displayed in an organized manner based on the at least one of rating of each item and the pricing of each item.

Appeal Br. 12 (Claims App'x.) (bracketed limitation designations added).

REJECTION³

The Examiner rejects claims 1, 8–11, 13, 14, 20–23, and 25–29 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. *See* Final Act. 12–13.

OPINION

Subject Matter Eligibility—35 U.S.C. § 101

Under 35 U.S.C. § 101, a patent may be obtained for “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.” The Supreme Court has “long held that this provision contains an important 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) (quoting *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)).

³ The Examiner has withdrawn the rejection of claims 26 and 27 under 35 U.S.C. § 112, first paragraph for failing to comply with the written description requirement. *See* Final Act. 9–11; Ans. 3. The Examiner has also withdrawn the rejection of claims 1, 8–11, 13, 14, 20–23, and 25–29 under 35 U.S.C. § 112, second paragraph as being indefinite. *See* Final Act. 11–12; Ans. 3. Claim 16 was canceled by Appellant after the Final Office Action.

The Supreme Court, in *Alice*, reiterated the two-step framework previously set forth in *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 77–80 (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*, 573 U.S. at 217. The framework requires us first to consider “whether the claims at issue are directed to one of those patent-ineligible concepts.” *Alice*, 573 U.S. at 217. If so, we then examine “the elements of [the] claim both individually and ‘as an ordered combination’ to determine whether the additional elements ‘transform the nature of the claim’ into a patent-eligible application.” *Alice*, 573 U.S. at 217 (quoting *Mayo*, 566 U.S. at 78, 79). That is, we examine the claim for an “inventive concept,” “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*, 573 U.S. at 217–18 (alteration in original) (quoting *Mayo*, 566 U.S. at 72–73).

The Patent Office recently published revised guidance concerning this framework and the application of § 101. USPTO’s 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) (hereinafter “2019 Revised Guidance”). Under that guidance, we first look to whether the claim recites:

- (1) any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, mental processes, or certain methods of organizing human activity such as a fundamental economic practice or managing personal behavior or relationships or interactions between people) (hereinafter “Step 2A, prong 1”); and

(2) additional elements that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h)) (hereinafter “Step 2A, prong 2”).⁴

See 2019 Revised Guidance, 84 Fed. Reg. at 51–52, 55.

A claim that integrates a judicial exception into a practical application applies, relies on, or uses 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. *See* 2019 Revised Guidance, 84 Fed. Reg. at 54. When the judicial exception is so integrated, then the claim is not directed to a judicial exception and is patent eligible under 35 U.S.C. § 101. *Id.*

Only if a claim: (1) recites a judicial exception and (2) does not integrate that exception into a practical application, do we then evaluate whether the claim provides an inventive concept. *See* 2019 Revised Guidance 84 Fed. Reg. at 56; *Alice*, 573 U.S. at 217–18.

For example, we 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.⁵

See 2019 Revised Guidance, 84 Fed. Reg. at 56. With these principles in mind, we turn to the merits of the § 101 rejection. The Examiner rejects

⁴ All references to the MPEP are to the Ninth Edition, Revision 08–2017 (rev. Jan. 2018).

⁵ Items (3) and (4) are collectively referred to as “Step 2B” hereinafter and in the 2019 Revised Guidance.

Appellant's claims 1, 8–11, 13, 14, 20–23, and 25–29 as being directed to patent ineligible subject matter. *See* Final Act. 3–9, 12–13. Although Appellant argues the Examiner did not address the dependent claims (*see* Appeal Br. 10), Appellant does not separately argue the independent claims 1 and 14 or the dependent claims with specificity and, instead, argues claims 1, 8–11, 13, 14, 20–23, and 25–29 together for this rejection. *See* Appeal Br. 4–10. Accordingly, we address the Examiner's rejection of independent claim 1 and the claims not separately argued by Appellant as a group based on claim 1, as permitted by 37 C.F.R. § 41.37(c)(1)(iv).

Statutory Subject Matter

We find that claim 1 recites a “method” (*infra*). A “method” is a process, which is a statutory category of invention (subject matter) (USPTO's Step 1).

Abstract Idea

The Examiner rejects Appellant's claim 1 as being directed to patent ineligible subject matter. *See* Final Act. 3–9, 12–13; Ans. 3–26. Specifically, the Examiner concludes claim 1 (and the other pending claims) “is directed to a judicial exception (i.e., . . . an abstract idea) without significantly more,” in particular, the “abstract idea of rating and/or pricing a plurality of items.” Final Act. 12 (quotes omitted). The Examiner also concludes the abstract idea includes “performing the steps of identifying a set of attributes . . . , receiving plural data sets . . . , applying a scalar structure . . . , determining a competitive index . . . , and rating and/or pricing each item . . . which corresponds to concepts identified as abstract ideas by the courts,” similar to the claims in *Versata*. Final Act. 13 (citing *Versata, Dev. Grp., Inc. v. SAP Am., Inc.*, 793 F.3d 1306 (Fed. Cir. 2015)).

The Examiner further concludes claim 1 (and the other pending claims) describe a concept that “is not meaningfully different than that idea of itself found by the courts to be an abstract idea.” Final Act. 13.

Appellant contends the Examiner erred in rejecting the claims as being directed to patent-ineligible subject matter. *See* Appeal Br. 4–10; Reply Br. 1–4. Specifically, Appellant contends, with respect to the first step of the *Alice* analysis, that the Examiner erred in rejecting claim 1 (and the other pending claims) because: (1) claim 1 is not directed to an abstract idea and the Examiner’s interpretation of the claim(s) is overbroad— “[t]he rejection addresses broad abstractions of some of the individual claim elements and refuses to address the combination of the elements as a whole” (Appeal Br. 5; *see* Appeal Br. 4–7; Reply Br. 1–4) (emphasis omitted); (2) the Examiner has not sufficiently explained the basis for the rejection and has not presented a *prima facie* case— “[t]he rejection is based solely on conclusion without analysis” (Appeal Br. 7; *see* Appeal Br. 4–7; Reply Br. 1–4); and (3) the Examiner has overlooked the technical improvement provided by the instant claims— “the rejection ignores the technical problem solved by the ordered combination of claimed elements” (Appeal Br. 7; *see* Appeal Br. 7–9).

For the reasons discussed below, we conclude Appellant’s claim 1 (and the other pending claims) recites abstract ideas, these abstract ideas are not integrated into a practical application, nor do they include an inventive concept. In view of the 2019 Revised Guidance, we clarify and expand the Examiner’s reasoning as follows.

We begin our analysis by broadly but reasonably construing Appellant’s claim 1 (*see* Appeal Br. 34–35 (Claims App’x.)). Claim 1

recites a “method implemented by at least one computing device for rating plural items,” i.e., a computing device performing a process (method) for providing (numerical) ratings for multiple items. *See* Spec. ¶¶ 2, 9, 20. The process comprises the steps of: “identifying . . . a set of attributes associated with the items.” The “identifying” is performed by “the at least one computing device.” That is, the computing device identifying data, where the data is characterized as item attributes—a set of attributes associated with the items (to be rated). *See* Spec. ¶¶ 10, 12, 25. Hereinafter, we refer to this step (sub-process or function) as “Step A.” The “method” recited in claim 1 includes a non-abstract element (physical structure) performing the functionality of Step A. This additional (non-abstract) element, is the recited at least one computing device. *See* Spec. ¶ 22; Fig. 1.

Claim 1 further recites “receiving . . . plural data sets, each data set including values of the set of attributes for a specified item.” The “receiving” is performed by “the at least one computing device.” In other words, the process includes the computing device receiving data—multiple data sets, each including data that is characterized as attribute values for a specified item (item attribute values). For example different models of cameras may have different sizes and types of displays (view screens)—including no display, an LCD display, or a color LCD display. *See* Spec ¶¶ 25, 27. Hereinafter, we refer to this step as “Step B.”

Claim 1 additionally recites “applying . . . a scalar structure to item attribute values of the items to provide a scalar value corresponding to each attribute value for each specified item” by “the at least one computing device.” That is, applying a scalar structure (numbering system) to item attribute values—the computing device provides a scalar (numerical) value

corresponding to each attribute value for each specified item—i.e., assigning a numerical value to each item attribute value. *See Spec.* ¶¶ 26–27.

Continuing the earlier example, the different camera displays (view screens) are assigned a corresponding numerical value, including: “0” for no display, “1” for an LCD display, or “3” for a color LCD display. *See Spec.* ¶¶ 26, 27. Hereinafter, we refer to this step as “Step C.”

Claim 1 also recites “the at least one computing device” “determining . . . a competitive index for one or more of the item attributes based on the scalar values” where the competitive index “comprises an average of a maximum percentile rank and a minimum percentile rank of a percentile rank range associated with a scalar value corresponding to that item attribute.” In other words, the process includes calculating a competitive index for the item attributes based on the assigned scalar (numerical) values. The competitive index is characterized as an average of a maximum percentile rank and a minimum percentile rank of a percentile rank range associated with the particular scalar values corresponding to the item attribute (in an ordered list of the scalar values). The maximum percentile rank and the minimum percentile rank are characterized as not being the same for the percentile rank range. *See Spec.* ¶¶ 28–30, 32–34; Table 1. Hereinafter, we refer to this step as “Step D.”

Claim 1 further recites “the at least one computing device at least one of rating and pricing each item based on the competitive index to create item results.” That is, the process includes the step of the computing device providing a rating (or price) for each item based on the competitive index. *See Spec.* ¶¶ 47, 49–56. Hereinafter, we refer to this step as “Step E.”

Claim 1 then recites “transmitting . . . the item results to be displayed in an organized manner based on the at least one of rating of each item and the pricing of each item” by “the at least one computing device.” In other words, the computing device transmitting the item results (the item rating or price) such that the results may be displayed—i.e., sending (transmitting) data. *See* Spec. ¶¶ 8, 57. Hereinafter, we refer to this step as “Step F.”

In summary, claim 1 recites a process for rating items (products) by identifying item attributes (data), receiving item attribute values (data), assigning a numerical value to each item attribute value, calculating a competitive index for the item attributes based on the item attribute numerical values, producing a result (a rating or price) for each item based on the competitive index, and publishing the result. Hereinafter, we refer to this process as the “item rating process.” This is consistent with how Appellant describes the claimed invention—“the preferred embodiment . . . facilitates rating plural products without the disadvantages of conventional methods and systems for rating” by “taking into consideration the actual number of products in a product category that have, or do not have, a particular feature and/or attribute.” Spec. ¶ 20.

Appellant’s contentions (*supra*) focus on the Examiner’s purported failure to properly characterize claim 1. *See, e.g.*, Appeal Br. 4–7; Reply Br. 1–4. Here, in rejecting the claims (in particular claim 1) under 35 U.S.C. § 101, the Examiner analyzed the claims using the *Mayo/Alice* two-step framework, consistent with the guidance set forth in the USPTO’s “2014 Interim Guidance on Patent Subject Matter Eligibility,” 79 Fed. Reg. 74618 (Dec. 16, 2014), in effect at the time the rejection was made, i.e., on January 23, 2018. The Examiner notified Appellant of the reasons for the rejection

“together with such information and references as may be useful in judging of the propriety of continuing the prosecution of . . . [the] application.” 35 U.S.C. § 132. *See* Final Act. 3–9, 12–13. In doing so, the Examiner set forth a prima facie case of unpatentability such that the burden of production shifted to Appellant to demonstrate that the claims are patent-eligible. We agree generally with the Examiner’s rejection under § 101. We clarify and expand the Examiner’s reasoning in view of the 2019 Revised Guidance.

The Examiner concluded that Appellant’s claims were focused on the abstract idea of “rating and/or pricing a plurality of items” (Final Act. 12 (quotes omitted)), which corresponds to concepts similar to those found to be abstract in *Versata*, and which was “not meaningfully different than [an] ‘idea of itself’”—i.e., mental processes (Final Act. 13). *See* Final Act. 12–13. In *Versata*, the Federal Circuit concurred with the USPTO’s conclusion that the at-issue claims were drawn to the abstract idea of calculating a price using organizational hierarchies, which could be accomplished mentally or utilizing pen and paper. *See Versata*, 793 F.3d at 1331, 1333–35. We agree with the Examiner that the instant claims are similar to those in *Versata*.

Appellant also contends (*supra*) that the Examiner failed to glean from claim 1 (and the other pending claims) that the claims recite a technological improvement (*see, e.g.*, Appeal Br. 7–9). Claim 1, however, recites no substantive limitations on how the item rating process calculates the various statistical values, other than characterizing the “competitive index” as an average of a maximum percentile rank and a minimum percentile rank associated with particular scalar values corresponding to a particular item attribute. The limitations are entirely functional in nature, or characterize various data utilized in Steps A–F (*supra*).

Although Appellant contends the claims describe purported technological improvements or advances provided by the item rating process, claim 1 (and the other pending claims) does not explicitly recite any specific improvements to technology, i.e., performing any improved computer processing or analysis. Claim 1, instead, simply recites identifying and receiving data, assigning a numerical value to the data (where the data values are not numerical), analyzing data (performing statistical analysis) and calculating an index, and calculating ratings from the index. In each instance, the particular means of accomplishing the functionality is not recited in the claim. The computing device (discussed *supra*) is an additional element that are not part of the abstract idea analysis.

A person can perform the functions of steps A and C–E (delineated above) mentally, or by using pen and paper. *See, e.g.*, Appellant’s Figs. 2, 3. Nowhere does Appellant point to specific claim limitations that distinguish over a human process. Performing data analysis and statistical calculations, as well as the collection and publication (outputting) of information related to such analysis (steps B and F), has been determined by our reviewing court to be an abstract concept (a mental process) that is not patent eligible. Indeed, even if such analysis requires one to access and gather data from a database or utilize a pen and paper in the analysis (such as to graphically represent a data set), such analysis may still be an abstract mental process. *See CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1372 (Fed. Cir. 2011) (“[E]ven if some physical steps are required to obtain information from the database . . . such data-gathering steps cannot alone confer patentability.” A claim focused on verifying credit card transaction information is directed to “unpatentable mental processes” because the

claim’s steps “can be performed in the human mind, or by a human using a pen and paper.”); *see also SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1165, 1167–68 (Fed. Cir. 2018) (Claims reciting “[a] method for providing statistical analysis” (*id.* at 1165), were determined to be “directed to an abstract idea” (*id.* at 1168). “As many cases make clear, even if a process of collecting and analyzing information is limited to particular content or a particular source, that limitation does not make the collection and analysis other than abstract” (*id.* (citation and quotation marks omitted)); *Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1340 (Fed. Cir. 2017) (identifying the abstract idea of collecting, displaying, and manipulating data); *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016) (characterizing collecting information, analyzing information by steps people go through in their minds, or by mathematical algorithms, and presenting the results of collecting and analyzing information, without more, as matters within the realm of abstract ideas); *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat’l Ass’n*, 776 F.3d 1343, 1345, 1347 (Fed. Cir. 2014) (finding the “claims generally recite . . . extracting data . . . [and] recognizing specific information from the extracted data” and that the “claims are drawn to the basic concept of data recognition”); *Bancorp Servs., L.L.C. v. Sun Life Assurance Co. of Can. (U.S.)*, 687 F.3d 1266, 1278 (Fed. Cir. 2012) (“[T]he fact that the required calculations could be performed more efficiently via a computer does not materially alter the patent eligibility of the claimed subject matter.”).

In summary, we conclude Appellant’s claim 1 recites a judicial exception (USPTO’s Step 2A, Prong 1; *see* 2019 Revised Guidance). Specifically, claim 1 recites a process for rating items by identifying item

attributes, receiving item attribute values, assigning a numerical value to each item attribute value, calculating a competitive index for the item attributes, producing a rating for each item based on the competitive index, and publishing the result. The item rating process consists of mental processes performed in the human mind (or utilizing pen and paper) including observation, evaluation, or judgment. *See* 2019 Revised Guidance, 84 Fed. Reg. at 52, 53 (listing “[m]ental processes—concepts performed in the human mind (including an observation, evaluation, judgment, opinion)” as one of the “enumerated groupings of abstract ideas” (footnote omitted)). The revised guidance explains that “mental processes” include acts that people can perform in their minds or using pen and paper, even if the claim recites that a generic computer component performs the acts. *See* 2019 Revised Guidance, 84 Fed. Reg. at 52 n.14 (“If a claim, under its broadest reasonable interpretation, covers performance in the mind but for the recitation of generic computer components, then it is still in the mental processes category unless the claim cannot practically be performed in the mind.”). Because each of the limitations discussed above encompasses an act that people can practically perform in their minds or using pen and paper, claim 1 recites mental processes. Appellant’s arguments have not persuaded us otherwise.

Practical Application

We next consider whether claim 1 integrates the abstract idea into a practical application (USPTO’s Step 2A, Prong 2). *See* Revised Guidance, 84 Fed. Reg. at 51. In doing so, we consider whether there are any additional elements beyond the abstract idea that, individually or in combination, “integrate the [abstract idea] into a practical application, using

one or more of the considerations laid out by the Supreme Court and the Federal Circuit.” Revised Guidance, 84 Fed. Reg. at 54–55.

Appellant’s claim 1 recites an additional element beyond the abstract item rating process (the judicial exception) (*supra*). The additional element in claim 1 includes the recited “at least one computing device,” which performs the functionality of Steps A–F. The written description indicates that this element encompasses commonplace generic components—“the rating system 10 . . . may be implemented with any type of hardware and software, and may be a pre-programmed *general purpose computing device*,” such as a “personal computer, a portable computer, a thin client, a hand held device, a wireless phone, or any combination of such devices” (Spec. ¶ 22) (emphasis added). Appellant does not describe the “computing device” with any specificity. *See* Spec. ¶¶ 22–23; Fig. 1. The written description also indicates the “computing device” performs commonplace computer functions—the computing device may be “adapted to control and/or facilitate functions of various modules of the rating system 10” (Spec. ¶ 22; *see* Spec. ¶ 23) the functions including: “stor[ing] the gathered attributes for a product category and the attributes of each product in a database or other storage device” (Spec. ¶ 25); “provid[ing] a scalar value of each attribute” (Spec. ¶ 26; *see* Spec. ¶ 27)—i.e., assigning a numerical value (according to undisclosed means); calculating and processing statistical data (to determine an index) (*see* Spec. ¶¶ 28–30, 32–34); calculating a value (a rating or price based on the index) (*see* Spec. ¶ 47); and outputting or sending (transmitting/publishing) data (*see* Spec. ¶ 57).

The written description simply describes the additional element performing its accustomed functions utilizing standard techniques with no

technical details—the computing device (CPU) identifying and receiving attribute values (i.e., storing), assigning a numerical value to each item attribute value, calculating an index for the item attributes based on the item attribute numerical values (i.e., performing data analysis and manipulation), producing a rating (i.e., also performing data analysis and manipulation), and outputting the result. *See, e.g.*, Spec. ¶¶ 22, 23, 25, 27–30, 32–34, 47, 57. These descriptions show that the additional elements are generic. *See Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1384 (Fed. Cir. 1986) (“[A] patent need not teach, and preferably omits, what is well known in the art.”); *Intellectual Ventures I LLC v. Erie Indem. Co.*, 850 F.3d 1315, 1331 (Fed. Cir. 2017) (“The claimed mobile interface is so lacking in implementation details that it amounts to merely a generic component (software, hardware, or firmware) that permits the performance of the abstract idea, i.e., to retrieve the user-specific resources.”).

Appellant contends claim 1 (as well as other pending claims) provides a technical solution to a “technical problem.” Appeal Br. 7; *see* Appeal Br. 7–9. In other words, the claims recite a technological improvement that amounts to more than simply utilizing a computer as a tool to accomplish the item rating process.

Appellant’s contentions correspond to the reasoning in MPEP §§ 2106.05(a)–(c), where additional elements integrate the judicial exception into a practical application. We, however, disagree with Appellant’s contentions. Appellant’s additional element, the computing device, does not apply or use the item rating process (the judicial exception) in a manner that imposes a meaningful limit on the judicial exception, such that it is more than a drafting effort designed to monopolize the exception. *See Alice*, 573

U.S. at 221–24 (citing *Mayo*, 566 U.S. at 78–85). Rather, Appellant’s claim recites a generic computer element (the computing device or a processor (CPU)) that is utilized as a tool to carry out the functions recited in the item rating process (discussed *supra*). Utilizing a computer as a tool to perform common data processing functions that are part of a mental process (an abstract idea) does not impose a meaningful limit on the abstract idea. *See* MPEP § 2106.05(f); *see also Alice*, 573 U.S. at 223 (finding “if [the] recitation of a computer amounts to a mere instruction to implement an abstract idea on a computer that addition cannot impart patent eligibility” (quotations and internal citations omitted)). In particular, similar to *BSG Tech.*, Appellant’s claims do not recite “improvements to database functionality,” instead the “benefits . . . flow from performing an abstract idea in conjunction with a well-known database structure.” *BSG Tech., LLC v. Buyseasons, Inc.*, 899 F.3d 1281, 1288 (Fed. Cir. 2018) (claims directed to indexing user-provided database information were drawn to an abstract concept and did not recite a technical improvement. *See id.* at 1286–88).

As discussed *supra*, nothing in claim 1, precludes a human from performing the item rating process. Performing such data analysis functionality is the reason computers exist. The mere automation of a process that can be performed by a human is not sufficient to show an improvement in computer functionality, and the fact that a computer may increase efficiency or improve the accuracy of product ratings—*see* Appeal Br. 7–9 (citing Spec. ¶¶ 16–20)—does not change the abstract-idea analysis. *See Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1370 (Fed. Cir. 2015) (holding that “merely adding computer functionality to increase the speed or efficiency of the process does not

confer patent eligibility on an otherwise abstract idea”); *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015) (“[R]elying on a computer to perform routine tasks more quickly or more accurately is insufficient to render a claim patent eligible.”); *see also FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1095 (Fed. Cir. 2016).

Appellant misconstrues the relevant law. Even if, *arguendo*, Appellant’s claimed process includes an (undisclosed) improved algorithm for calculating an index and rating an item based on the index—which we did not find (*supra*)—claim 1 does not specify any improvement in how a computing device performs the underlying data processing and analysis necessary to perform the algorithm. In other words, only the abstract ideas in claim 1 are potentially new (although we make no determination as to novelty or obviousness), not the way a computer operates.

In summary, “the focus of the claims is not on such an improvement in computers as tools, but on certain independently abstract ideas that use computers as tools.” *Elec. Power Grp.*, 830 F.3d at 1354; *see also* MPEP § 2106.05(f) (emphasis omitted) (instructing Examiners to consider “[w]hether the claim invokes computers or other machinery merely as a tool to perform an existing process” in determining whether the claim recites mere instructions to apply the exception), cited in 2019 Revised Guidance, 84 Fed. Reg. at 55, n.30. Thus, we conclude the claims are directed to an abstract idea that is not integrated into a practical application.

Inventive Concept

Having concluded Appellant’s claims are directed to an abstract idea under the 2019 Revised Guidance (Step 2A analysis), we consider whether claim 1 has an inventive concept, that is, whether the claim has additional

elements that “‘transform the nature of the claim’ into a patent-eligible application.” *Alice*, 573 U.S. at 217 (quoting *Mayo*, 566 U.S. at 78, 79). As discussed above, this requires us to evaluate whether the additional claim elements add “a specific limitation or combination of limitations that are not well-understood, routine, conventional activity in the field” or “simply append[] well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality.” Revised Guidance, 84 Fed. Reg. at 56. We evaluate the elements of the claims “individually and ‘as an ordered combination.’” *Alice*, 573 U.S. at 217 (quoting *Mayo*, 566 U.S. at 78, 79); *see BASCOM Glob. Internet Sers., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1350 (Fed. Cir. 2016) (“[A]n inventive concept can be found in the non-conventional and non-generic arrangement of known, conventional pieces.”).

The Examiner determined Appellant’s “claim(s) do not include additional elements that are sufficient to amount to significantly more than the judicial exception because the additional computer elements, which are recited at a high level of generality, provide conventional computer functions that do not add meaningful limits to practicing the abstract idea.” Final Act. 12–13; *see* Final Act. 3–9, 12–13; Ans. 3–26.

Appellant, on the other hand, reiterates the limitations of claim 1 (*see* Appeal Br. 7) and portions of the Specification (*see* Appeal Br. 7–9 (citing Spec. ¶¶ 16–20)) and contends the claim elements (of claim 1 and the other pending claims) “recite an inventive concept directed to ‘significantly more’ than the alleged abstract idea.” Appeal Br. 9. Appellant also contends the Examiner did not analyze the claim elements (of claim 1 and the other pending claims) as an ordered combination as required by

BASCOM. See Appeal. Br. 9–10; Reply Br. 2–4. Appellant further contends the Examiner did not provide sufficient evidence that the claim limitations recite well understood, routine, or conventional activities. See Reply Br. 1–2.⁶

Appellant fails to persuade us of error in the Examiner’s rejection with respect to the second *Alice* step (USPTO’s Step 2B). We agree with the Examiner that Appellant’s claim 1 (and the other pending claims) does not evince an “inventive concept” that is significantly more than the abstract idea itself. In particular, Appellant fails to explain how the additional elements (above) add specific limitations beyond the judicial exception that are not well-understood, routine, and conventional in the field.

As previously discussed, claim 1 (and the other pending claims) merely recites additional non-abstract elements (above)—specifically the computing device—a generic computer element that carries out common data processing functions recited in the item rating process (the abstract idea). Specifically, Appellant’s Specification describes a computer system (not recited in the claims), “the rating system” (Spec. ¶ 22), as a collection of conventional (generic) computer components performing traditional computer functions—these components include the above-discussed computing device. See, e.g., Spec. ¶¶ 22–24; Fig. 1. Also, to the extent that

⁶ Appellant’s Reply Brief was filed after the publication of the *Berkheimer* decision (*Berkheimer v. HP Inc.*, 881 F.3d 1360 (Fed. Cir. 2018)) and the USPTO’s *Berkheimer* Memorandum (*Changes in Examination Procedure Pertaining to Subject Matter Eligibility, Recent Subject Matter Eligibility Decision (Berkheimer v. HP, Inc.)* (April 19, 2018) available at <https://www.uspto.gov/sites/default/files/documents/memo-berkheimer-20180419.PDF>). Appellant makes no explicit arguments with respect to *Berkheimer*.

the written description describes the functions performed by these elements, Appellant's Specification describes the functions at a high level of generality and largely does not describe the particulars of how the claimed invention implements these functions. *See* discussion *supra*; *see also* Spec. ¶¶ 22, 23, 25, 27–30, 32–34, 47, 57 (describing the functions in the item rating process). Such conventional computer processes operating on conventional computer hardware “do not alone transform an otherwise abstract idea into patent-eligible subject matter.” *FairWarning*, 839 F.3d at 1096 (citing *DDR Holdings*, 773 F.3d at 1256); *see also Berkheimer* Memorandum at 3 (explaining that a specification that describes additional elements “in a manner that indicates that the additional elements are sufficiently well-known that the specification does not need to describe the particulars of such additional elements to satisfy 35 U.S.C. § 112(a)” can show that the elements are well-understood, routine, and conventional).

Appellant does not direct us to any disclosure in the Specification that indicates the additional elements, either individually or as an ordered combination, perform anything other than well-understood, routine, and conventional processing functions, such as generating and manipulating data. *See Inventor Holdings, LLC v. Bed Bath & Beyond, Inc.*, 876 F.3d 1372, 1378 (Fed. Cir. 2017) (holding that considering claims reciting data retrieval, analysis, modification, generation, display, and transmission as an “ordered combination” reveals that they “amount to ‘nothing significantly more’ than an instruction to apply [an] abstract idea” using generic computer technology) (internal citation omitted). In short, as previously discussed, claim 1 (and the other pending claims) does no more than use generic hardware to implement the claimed abstract idea.

To the extent Appellant contends the Examiner failed to comply with the requirements of the *Berkheimer* decision (*supra*), we disagree. The Examiner generally cited to Appellant's Specification as well as extrinsic evidence to support the Examiner's determinations that the claims recite well-understood, routine, and conventional components and activities. *See* Final Act. 13 (citing Gilmour, *Hello, good buy*, Internet Magazine at 64, EMAP Media Ltd., November 2001); Ans. 3–7.

For at least the reasons above, we are not persuaded of Examiner error in the rejection of claim 1 under 35 U.S.C. § 101. Thus, we sustain the Examiner's rejection under § 101 of independent claim 1, independent claim 14, and dependent claims 8–11, 13, 20–23, and 25–29, which depend therefrom and were not separately argued with specificity.

CONCLUSION

For the reasons discussed above, we determine that claims 1, 8–11, 13, 14, 20–23, and 25–29 are directed to an abstract idea and do not demonstrate an inventive concept.

Appellant has not shown that the Examiner erred in rejecting claims 1, 8–11, 13, 14, 20–23, and 25–29 under 35 U.S.C. § 101. We, therefore, sustain the Examiner's rejection of claims 1, 8–11, 13, 14, 20–23, and 25–29 under § 101.

CONCLUSION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Basis	Affirmed	Reversed
1, 8–11, 13, 14, 20–23, 25–29	101	Eligibility	1, 8–11, 13, 14, 20–23, 25–29	

TIME PERIOD FOR RESPONSE

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

AFFIRMED