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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* TERRY DOOLEY, MANISH NATHWANI,  
STEPHAN THOMASEE, and SCOTT DOBESH

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Appeal 2018–008226  
Application 13/555,963  
Technology Center 3600

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Before BRADLEY W. BAUMEISTER, ROBERT J. WEINSCHENK, and  
RUSSELL E. CASS, *Administrative Patent Judges*.

WEINSCHENK, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>1</sup> appeals from the Examiner’s decision to reject claims 1–8, 10–12, and 14–24, which constitute all the claims pending in this application. Claims 9 and 13 have been cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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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 identifies the real party in interest as ITS, Inc. Appeal Brief filed April 2, 2018 (“Appeal Br.”) 3.

### CLAIMED SUBJECT MATTER

The claimed subject matter is directed to “processing payment transactions and in particular to processing consumer authentication value (CAV) based electronic fund transfer (EFT) transactions with dual message capabilities.” Spec. ¶ 1. The Specification states that, in a conventional CAV-based transaction, a single message is generated that includes a request to transfer an amount of funds. *Id.* ¶¶ 2–3. Upon approval, the funds are transferred, and the CAV is deleted for security purposes. *Id.* ¶ 3. In other words, a conventional CAV-based transaction requires the CAV for each transfer request and “offers little flexibility such as partial transfers of the approved amount.” *Id.* As a result, a restaurant, for example, “may be unable to pre-authorize an amount greater than the dining bill in order to account for potential tips,” because a conventional CAV-based transaction “would cause the entire pre-authorization amount to be transferred upon approval.” *Id.* ¶ 5.

The Specification describes a system and method that addresses the aforementioned drawbacks of a conventional CAV-based transaction. *Id.* ¶ 7. Specifically, a merchant communicates an authorization request that includes an encrypted CAV and a total amount of funds to an EFT server, which then communicates an authorization request to a financial institution. *Id.* ¶¶ 24–26. The financial institution then communicates an authorization approval response to the EFT server. *Id.* ¶ 27. The EFT server generates a unique data element, such as a private key, that is associated with the authorization approval response and communicates the approval and unique data element to the merchant. *Id.* ¶¶ 29–31.

To receive a portion of the total amount of authorized funds, the merchant communicates a settlement advice request message that includes the unique data element and the requested portion of the authorized funds to the EFT server. *Id.* ¶¶ 34–35. The EFT server compares the unique data element in the settlement advice request message with the unique data element previously generated by the EFT server. *Id.* ¶ 36. If there is a match, the EFT server communicates the settlement advice request message to the financial institution, and the financial institution transfers the requested portion of the authorized funds to the merchant. *Id.* ¶¶ 36–37. The Specification explains that by using this “dual message format (one type of message for pre-authorizing and another type of message for settlement advice requests) for CAV-based transactions, the system may leverage the added security provided by CAV-based authentication without having the CAV communicated multiples times amongst the relevant entities.” *Id.* ¶ 10.

Claim 22 is representative and is reproduced below.

22. A computer-implemented method of facilitating multiple electronic funds transfers associated with a single consumer authentication value (CAV)-based transaction, the method comprising:

receiving, by an electronic funds transfer (EFT) server device and from a remote merchant acquirer device, a first generated authorization request comprising an encrypted CAV and a total amount of funds associated with the single CAV-based transaction to be transferred, wherein the remote merchant acquirer device is configured to obtain the first generated authorization request via at least one of a merchant terminal device, a merchant e-commerce web server device, and a consumer communications device;

generating, by the EFT server device and in response to receiving the first generated authorization request, a second authorization request associated with the received first

generated authorization request, the second generated authorization request comprising the encrypted CAV and the total amount of funds to be transferred;

communicating, by the EFT server device and to a remote issuing financial institution device, the second generated authorization request;

receiving, by the EFT server device and from the remote issuing financial institution device, an authorization approval response that indicates that the total amount of funds to be transferred included in the second generated authorization request is authorized;

generating, by the EFT server device and in response to receiving the authorization approval response, a unique data element that is uniquely associated with the received authorization approval response and provides an indication that the total amount of the funds to be transferred has been authorized;

communicating, by the EFT server device and to the remote merchant acquirer device, an updated authorization approval response including the generated unique data element;

receiving, by the EFT server device and from the remote merchant acquirer device, a first settlement advice request message comprising the generated unique data element and a request to transfer a first amount that is less than the authorized total amount of the funds to be transferred; and

in response to receipt of the first settlement advice request message and a first determination, by the EFT server device, that the generated unique data element included in the received first settlement advice request message matches the generated unique data element included in the received authorization approval response, causing, by at least the EFT server device, the first amount to be transferred without requiring additional communications comprising the CAV from the remote merchant acquirer device;

receiving, by the EFT server device and from the remote merchant acquirer device, a second settlement advice request

message, wherein the received second settlement advice request message includes a second amount that is less than the total amount of the funds to be transferred, and the generated unique data element; and

in response to receipt of the second settlement advice request message and a second determination, by the EFT server device, that the generated unique data element included in the received second settlement advice request message matches the generated unique data element included in the received authorization approval response, causing, by at least the EFT server device, the second amount of the total amount to be transferred without additional communications comprising the CAV.

## REJECTION

Claims 1–8, 10–12, and 14–24 are rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. Non-Final Action mailed September 7, 2017 (“Non-Final Act.”) 21–28.

Claims 1–8, 10–12, and 22–24 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Non-Final Act. 28–29.

## OPINION

### *SECTION 101 REJECTION*

The Examiner rejects claims 1–8, 10–12, and 14–24 under § 101 as being directed to patent-ineligible subject matter. Non-Final Act. 21–28. Appellant’s arguments focus on the limitations of claim 22 (Appeal Br. 20–23), so we analyze claim 22 as exemplary below.

#### *Standard for Subject Matter Eligibility*

For issues involving subject matter eligibility under § 101, we apply the two-step test set forth in *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208

(2014). In the first step, we “determine whether the claims at issue are directed to a patent-ineligible concept.” *Id.* at 218. If the initial threshold is met, we move to the second step, in which we “consider the elements of each 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.” *Id.* at 217 (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 78–79 (2012)). The second step is a search for “an ‘inventive concept’—*i.e.*, an element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.’” *Id.* at 217–18 (quoting *Mayo*, 566 U.S. at 72–73).

The USPTO has published revised guidance on the application of § 101. *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Revised Guidance”). Under the Revised Guidance, we first determine whether the claim recites:

- (1) any judicial exceptions, including certain groupings of abstract ideas (*i.e.*, mathematical concepts, certain methods of organizing human activity, or mental processes); and
- (2) additional elements that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h)).

Revised Guidance, 84 Fed. Reg. at 52, 54–55.

If a claim recites a judicial exception and does not integrate that exception into a practical application, we then determine whether the claim:

- (3) adds a specific limitation beyond the judicial exception that is not well-understood, routine, conventional activity 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.

Revised Guidance, 84 Fed. Reg. at 56.

*Step 2A, Prong 1*

Under Step 2A, Prong 1, of the Revised Guidance, we determine whether the claims recite any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human activity, or mental processes). *Id.* at 52, 54. The Examiner finds that the claims recite the abstract idea of “authorizing fund or payment transfers.” Non-Final Act. 22. Appellant disagrees, arguing that “[t]he claims are not analogous to any of the judicial exception[s] from the court decisions cited by the Examiner.” Appeal Br. 25–26 (emphasis omitted).

We agree with the Examiner that the claims recite an abstract idea. Specifically, the claims recite concepts that can be performed in the human mind or by a human with pen and paper, and, therefore, qualify as “mental processes” under the Revised Guidance. *See* Revised Guidance, 84 Fed. Reg. at 52. For example, claim 22 recites “receiving . . . a first generated authorization request comprising an encrypted CAV and a total amount of funds associated with the single CAV-based transaction to be transferred.” This step could be performed by a human receiving, verbally or in writing, a first authorization request including an encrypted CAV and a total amount of funds from another human.

Claim 22 recites “generating . . . in response to receiving the first generated authorization request, a second authorization request associated

with the received first generated authorization request, the second generated authorization request comprising the encrypted CAV and the total amount of funds to be transferred.” This step could be performed by a human generating, in the mind or using pen and paper, a second authorization request including the encrypted CAV and the total amount of funds.

Claim 22 recites “communicating . . . the second generated authorization request.” This step could be performed by a human communicating, verbally or in writing, the second authorization request to another human.

Claim 22 recites “receiving . . . an authorization approval response that indicates that the total amount of funds to be transferred included in the second generated authorization request is authorized.” This step could be performed by a human receiving, verbally or in writing, an authorization approval response including the total amount of funds from another human.

Claim 22 recites “generating . . . in response to receiving the authorization approval response, a unique data element that is uniquely associated with the received authorization approval response and provides an indication that the total amount of the funds to be transferred has been authorized.” The Specification explains that a “unique data element may include an alphanumeric string, a digital certificate, a binary file, and/or other data that can uniquely identify an authorization.” Spec. ¶ 7. Thus, this step could be performed by a human generating, in the mind or using pen and paper, a unique data element, such as an alphanumeric string, that is associated with the authorization approval response and provides an indication that the total amount of funds has been authorized.

Claim 22 recites “communicating . . . an updated authorization approval response including the generated unique data element.” This step could be performed by a human communicating, verbally or in writing, an updated authorization approval response including the unique data element to another human.

Claim 22 recites “receiving . . . a first settlement advice request message comprising the generated unique data element and a request to transfer a first amount that is less than the authorized total amount of the funds to be transferred.” This step could be performed by a human receiving, verbally or in writing, a first settlement advice request including the unique data element and a request to transfer a first amount less than the authorized total amount of funds from another human.

Claim 22 recites “in response to receipt of the first settlement advice request message and a first determination . . . that the generated unique data element included in the received first settlement advice request message matches the generated unique data element included in the received authorization approval response, causing . . . the first amount to be transferred without requiring additional communications comprising the CAV.” The first part of this step could be performed by a human determining, in the mind or using pen and paper, whether the unique data element in the first settlement advice request matches the unique data element in the authorization approval response. The second part of this step could be performed by a human causing, verbally or in writing, the first amount to be transferred without requiring additional communications including the CAV.

Claim 22 recites “receiving . . . a second settlement advice request message, wherein the received second settlement advice request message

includes a second amount that is less than the total amount of the funds to be transferred, and the generated unique data element.” This step could be performed by a human receiving, verbally or in writing, a second settlement advice request including the unique data element and a request to transfer a second amount less than the authorized total amount of funds from another human.

Claim 22 recites “in response to receipt of the second settlement advice request message and a second determination . . . that the generated unique data element included in the received second settlement advice request message matches the generated unique data element included in the received authorization approval response, causing . . . the second amount of the total amount to be transferred without additional communications comprising the CAV.” The first part of this step could be performed by a human determining, in the mind or using pen and paper, whether the unique data element in the second settlement advice request matches the unique data element in the authorization approval response. The second part of this step could be performed by a human causing, verbally or in writing, the second amount to be transferred without requiring additional communications including the CAV.

For the foregoing reasons, we conclude that claim 22 recites concepts performed in the human mind, which is one of the mental processes identified in the Revised Guidance, and thus an abstract idea. *See Revised Guidance*, 84 Fed. Reg. at 52; *Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1318 (Fed. Cir. 2016) (“[W]ith the exception of generic computer-implemented steps, there is nothing in the claims

themselves that foreclose them from being performed by a human, mentally or with pen and paper.”).

*Step 2A, Prong 2*

Under Step 2A, Prong 2, of the Revised Guidance, we determine whether the claims recite any additional elements that integrate the judicial exception into a practical application. Revised Guidance, 84 Fed. Reg. at 54–55. The Examiner finds that “[t]he claims recite the additional limitations of: an electronic funds transfer server device, a remote merchant acquirer device, a terminal device, a financial institution device, a merchant e-commerce web server device, a consumer communications device, and processors.” Non-Final Act. 23. The Examiner further finds that “[t]he servers, devices and processors are recited at a high level of generality and are recited as performing generic computer functions routinely used in computer applications.” *Id.*

Appellant contends that the claims recite “very specific features” that “improve the limitations of conventional technologies.” Appeal Br. 28. According to Appellant, “conventional electronic transferring computing systems present problems that include, among other things, requiring that a CAV be transmitted multiple times over networks that are susceptible to security breaches, and limiting an electronic value transfer amount to a fixed and immutable value.” *Id.* at 19. Appellant asserts that the claims address those deficiencies by “facilitating multiple electronic fund transfers associated with a *single* CAV-based transaction.” *Id.* at 22. Specifically, Appellant argues that “the claims recite a new kind of security and transfer function that enables a computer EFT server . . . device ‘to do things it could not do before’ by adding dual messaging capabilities (security) and

generating a unique data element that causes a transfer of amounts less than the total amount (flexibility).” *Id.* at 20. Appellant contends that this “improves security risks associated with the repetitious communication of sensitive data” and “enhances conventional CAV-based payment systems by employing a unique data element in communications involving the merchant to facilitate multiple fund transfers for a single CAV-based transaction.” *Id.*

We agree with the Examiner that the additional elements do not integrate the abstract idea into a practical application. Claim 22’s additional elements recite “an electronic funds transfer (EFT) server device,” “a remote merchant acquirer device,” “a merchant terminal device,” “a merchant e-commerce web server device,” “a consumer communications device,” and “a remote issuing financial institution device.” The Examiner’s determination that these additional elements are generic computer components is supported by the Specification. For example, Figure 1 shows the “EFT server device” as a box labeled “EFT server 130” including “processor 135” and “memory 136,” and the Specification describes it in generic terms:

EFT server 130 may include a processor 135, a memory 136, and/or other components that facilitate the functions of EFT server 130. In some implementations, processor 135 includes one or more processors configured to perform various functions of EFT server 130. In some implementations, memory 136 includes one or more tangible (i.e., non-transitory) computer readable media. Memory 136 may include one or more instructions that when executed by processor 135 configure processor 135 to perform functions of EFT server 130.

Spec. ¶ 49, Fig. 1.

As to the “remote merchant acquirer device,” this device is shown in Figure 1 as a box labeled “merchant acquirer 120,” and described generically in the Specification:

[M]erchant acquirer 120 may include a processor 125, a memory 126, and/or other components that facilitate the functions of merchant acquirer 120. In some implementations, processor 125 includes one or more processors configured to perform various functions of merchant acquirer 120. In some implementations, memory 126 includes one or more tangible (i.e., non-transitory) computer readable media. Memory 126 may include one or more instructions that when executed by processor 125 configure processor 125 to perform functions of merchant acquirer 120.

*Id.* ¶ 48, Fig. 1.

Similarly, Figure 1 shows the “consumer communications device” as a box labeled “communication device 105,” and the Specification describes it generically, explaining that it “may include any one or more of, for instance, a personal computer, portable computer, personal digital assistant (PDA), workstation, web-enabled mobile telephone, WAP device, web-to-voice device, or other device.” *Id.* ¶ 20, Fig. 1. The “merchant terminal device” is shown by another box labeled “merchant terminal 101” in Figure 1, and the Specification explains that it may be “a card reader.” *Id.* ¶ 51, Fig. 1. The “merchant e-commerce web server device” is shown by a box labeled “merchant website 103” in Figure 1, and described generically as “an online ‘virtual’ store of the merchant.” *Id.* ¶ 20, Fig. 1. And the “remote issuing financial institution device” is shown by a box labeled “financial institution 140” in Figure 1. *Id.* at Fig. 1.

Finally, the Specification states that “the invention may . . . be implemented as instructions stored on a machine-readable medium, which may be read and executed by one or more processors” and that the “machine-readable storage medium may include read only memory, random access memory, magnetic disk storage media, optical storage media, flash

memory devices, and other tangible storage media.” Spec. ¶ 85. In other words, claim 22’s servers, devices, and terminals implement instructions using generic processors and memory. *Id.*

Further, Appellant fails to demonstrate sufficiently that the claims recite technical improvements to these various generic components. Specifically, we are not persuaded by Appellant’s argument regarding the recited features of communicating dual messages and generating a unique data element. *See* Appeal Br. 20. As discussed above, claim 22’s steps relating to communicating dual messages and generating a unique data element are concepts that could be performed in the human mind and thus are part of the abstract idea. Simply implementing the abstract idea using generic computer components does not integrate the abstract idea into a practical application. 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.”); *Versata Dev. Grp. v. SAP Am., Inc.*, 793 F.3d 1306, 1335 (Fed. Cir. 2015) (“Courts have examined claims that required the use of a computer and still found that the underlying, patent-ineligible invention could be performed via pen and paper or in a person’s mind.”). Thus, we conclude that claim 22 does not integrate the abstract idea into a practical application.

#### *Step 2B*

Under Step 2B of the Revised Guidance, we determine whether the claims add a specific limitation beyond the judicial exception that is not well-understood, routine, conventional activity in the field or simply

appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception. Revised Guidance, 84 Fed. Reg. at 56.

The Examiner finds that the claims add “[g]eneric computer components recited as performing generic computer functions that are well-understood, routine and conventional activities that amount to no more than implementing the abstract idea with a computerized system.” Non-Final Act. 23. Appellant argues that “the claims are directed to an inventive concept that addresses a technological problem with conventional CAV-based electronic transfer computing systems that fail to provide adequate security or flexibility.” Appeal Br. 31. Specifically, according to Appellant, “[t]he claimed invention provides a specific ‘EFT server device’ that employs, among other things, dual messaging capabilities to provide robust security by reducing repetitive communication between devices, and a unique data element that facilitates the ability to transfer less than a full amount.” *Id.*

We agree with the Examiner that the claims simply append well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception. As discussed above, claim 22’s additional elements recite generic computer components that are used for implementing the abstract idea. Non-Final Act. 23; Spec. ¶ 85. For example, as discussed above, the Specification describes the “EFT server device” as including a conventional processor, memory, and computer instructions. Spec. ¶ 49.

Appellant does not dispute that the recited computer components were well-understood, routine, conventional components, and described as such in

the Specification. Appellant instead points to the functions of communicating dual messages and generating a unique data element as providing an inventive concept. Appeal Br. 31. But, as discussed above, claim 22’s steps relating to communicating dual messages and generating a unique data element are concepts that could be performed in the human mind and, thus, are part of the abstract idea.

In other words, claim 22 does not recite any improvement to the computer components. Claim 22 simply recites the abstract idea and appends well-understood, routine, conventional computer components that are used for implementing the abstract idea. Therefore, we conclude that claim 22’s elements, both individually and as an ordered combination, do not provide an inventive concept. *See Revised Guidance*, 84 Fed. Reg. at 56; *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1370 (Fed. Cir. 2018) (“The limitations amount to no more than performing the abstract idea of parsing and comparing data with conventional computer components.”).

#### *Summary*

For the reasons discussed above, we agree with the Examiner that claim 22 is directed to patent-ineligible subject matter. Appellant acknowledges that “the other independent claims are analogous to claim 22” (Appeal Br. 23), and Appellant does not present any separate arguments for the other independent claims or the dependent claims. *See id.* at 15–36. Therefore, we sustain the Examiner’s rejection of claims 1–8, 10–12, and 14–24 under § 101.

#### *SECTION 112 REJECTION*

The Examiner rejects claims 1–8, 10–12, and 22–24 under § 112, first paragraph, as failing to comply with the written description requirement.

Non-Final Act. 28–29. Independent claim 1 recites “wherein the remote merchant acquirer device is configured to obtain the first generated authorization request via at least one of a merchant terminal device, a merchant e-commerce web server device, and a consumer communications device.” Independent claims 7 and 22 recite a similar limitation.

The Examiner finds that “no written description of the e-commerce web service device can be found in the disclosure.” *Id.* at 29. Appellant argues that paragraphs 40 and 51 of the Specification “show at least that an eCommerce merchant service can send authorization requests.” Appeal Br. 38.

We agree with Appellant that the Specification provides sufficient written description of the recited merchant e-commerce web service device. The Specification states that “[b]y providing separate *authorization requests* and settlement advice request messages, CAV-based transactions may be facilitated at *any merchant site (e.g., eCommerce or ‘brick-and-mortar’)*.” Spec. ¶ 40 (emphasis added). The Specification also states that “merchant acquirer 120 may receive the *consumer request* via a communication device of the consumer (such as communication device 105 illustrated in Figure 1)” and “consumer 205 may use communication device 105 to navigate *an eCommerce website of merchant 207.*” *Id.* ¶ 51 (emphasis added). Thus, the Specification describes receiving an authorization request via a merchant e-commerce website. *Id.* ¶¶ 40, 51.

Although the Specification uses the phrase “eCommerce website,” rather than the claim phrase “e-commerce web service device,” we agree with Appellant that the Specification reasonably conveys to those skilled in the art that the inventor had possession of the claimed subject matter. *See*

*Ariad Pharm., Inc. v. Eli Lilly and Co.*, 598 F.3d 1336, 1352 (Fed. Cir. 2010) (en banc) (“[T]he written description requirement does not demand . . . that the specification recite the claimed invention *in haec verba*.”). Therefore, we reverse the Examiner’s rejection of claims 1–8, 10–12, and 22–24 under § 112.

### CONCLUSION

The decision of the Examiner rejecting claims 1–8, 10–12, and 14–24 under § 101 is affirmed.

The decision of the Examiner rejecting claims 1–8, 10–12, and 22–24 under § 112 is reversed.

### DECISION SUMMARY

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1–8, 10–12, 14–24	101	Eligibility	1–8, 10–12, 14–24	
1–8, 10–12, 22–24	112	Written Description		1–8, 10–12, 22–24
<b>Overall Outcome</b>			1–8, 10–12, 14–24	

### 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**