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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte HOWARD W. LUTNICK, JOSEPH NOVIELLO and
MICHAEL SWEETING

Appeal 2018-008250
Application 13/555,837
Technology Center 3600

Before CARL W. WHITEHEAD JR., SHARON FENICK and
RUSSELL E. CASS, *Administrative Patent Judges*.

WHITEHEAD JR., *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant¹ is appealing the final rejection of claims 1–8 and 24–35 under 35 U.S.C. § 134(a). Appeal Brief 11. Claims 9–23 are cancelled. Appeal Brief 11. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ We use the word Appellant to refer to “applicant” as defined in 37 C.F.R. § 1.42(a). Appellant identifies BGC PARTNERS, INC, as the real party in interest. Appeal Brief 3.

Introduction

According to Appellant, the invention is directed to “electronic systems and methods for obtaining trading exclusivity and/or trading priority in electronic trading systems.” Specification ¶ 1.

Representative Claim

1. A method for facilitating electronic trading over a network with interfaces of workstations, the method comprising:

transitioning, by at least one computing device of an electronic trading system, the electronic trading system from a first trading state to a second trading state, wherein the first trading state comprises an active trading state during which a plurality of participants at least one of negotiate and trade an item therein, and wherein the second trading state comprises a bid/offer state during which participants enter their respective bids and offers through interfaces of workstations of the participants;

determining, by the at least one computing device of the electronic trading system, whether an existing order having first on the follow priority status at a conclusion of the first state and having a non-zero size at the conclusion of the first state qualifies for an exclusive trading priority in the second trading state with respect to an incoming contra order received after the existing order, the incoming contra order received from an interface of at least one workstation coupled to the at least one computing device over a network, in which the act of determining whether the existing order qualifies for an exclusive trading priority in the second trading state with respect to an incoming contra order received after the existing order comprises determining that the existing order qualifies for an exclusive trading priority in the second trading state with respect to an incoming contra order received after the existing order based on (1) the first on the follow priority status of the existing order at the conclusion of the first trading state and (2) a determination that the existing order having a non-zero size satisfies a size requirement;

responsive to determining that the existing order qualifies for an exclusive trading priority in the second trading state with respect to an incoming order received after the existing order, presenting, by the at least one computing device of the electronic trading system, the incoming contra order for trading exclusively to an interface of a workstation of a participant associated with the existing order based on the existing order qualifying for an exclusive trading priority in the second trading state with respect to the incoming contra order;

causing to display, on a first portion and a second portion of a display screen of an interactive trading interface of a workstation of a participants, at the first portion of the display screen data representing an item to trade, price of the item, size of the item and last price of the item, and at the second portion of the display screen data representing market depth information which shows price and size for items that have not yet been traded and data representing bid and offer stacks indicating size of market participants that are bidding or offering at a current price;

automatically detecting whether an incoming order for an item is not clear to trade; and

in response to detecting that an incoming order is not clear to trade, automatically updating the display screen with a visual indicator adjacent to a price associated with a new order.

Rejection on Appeal

Claims 1–8 and 24–35 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to patent–ineligible subject matter. Final Action 7–18.

PRINCIPLES OF LAW

A. Section 101

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 U.S. 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 Court’s two-part framework, described in *Mayo* and *Alice*. *Alice* 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 Alice*, 573 U.S. 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 waterproof 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 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 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.* (citation omitted) (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 part 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.*

B. USPTO Section 101 Guidance

In January 2019, the U.S. Patent and Trademark Office (USPTO) published revised guidance on the application of § 101. 2019 Revised Patent

Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (January 7, 2019) (“2019 Revised Guidance”).² “All USPTO personnel are, as a matter of internal agency management, expected to follow the guidance.” *Id.* at 51; *see also* October 2019 Update at 1.

Under the 2019 Revised Guidance and the October 2019 Update, 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) (“Step 2A, Prong One”); and
- (2) additional elements that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h) (9th ed. Rev. 08.2017, Jan. 2018)) (“Step 2A, Prong Two”).³

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

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, do we then look, under Step 2B, to whether the claim:

² In response to received public comments, the Office issued further guidance on October 17, 2019, clarifying the 2019 Revised Guidance. USPTO, *October 2019 Update: Subject Matter Eligibility* (the “October 2019 Update”) (available at https://www.uspto.gov/sites/default/files/documents/peg_oct_2019_update.pdf).

³ This evaluation is performed by (a) identifying whether there are any additional elements recited in the claim beyond the judicial exception, and (b) evaluating those additional elements individually and in combination to determine whether the claim as a whole integrates the exception into a practical application. *See* 2019 Revised Guidance - Section III(A)(2), 84 Fed. Reg. 54–55.

(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.

2019 Revised Guidance, 84 Fed. Reg. at 52–56.

ANALYSIS

Rather than reiterate Appellant’s arguments and the Examiner’s determinations, we refer to the Appeal Brief (filed May 14, 2018), the Reply Brief (filed August 8, 2018), the Final Action (mailed August 25, 2017) and the Answer (mailed August 8, 2018), for the respective details.

35 U.S.C. § 101 Rejection

The Examiner determines the claims are patent ineligible under 35 U.S.C. § 101. *See* Final Action 9–10 (“The claims are principally drawn to defining the rules or conditions that govern the interaction between trading participants, which is similar to the commercial practices that have been found by the courts to be abstract ideas.”); *see Alice*, 573 U.S. at 217 (describing the two–step framework “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts”).

We are not persuaded the Examiner’s rejection is in error. Unless otherwise indicated, we adopt the Examiner’s findings and conclusions as

our own. We add the following primarily for emphasis and clarification with respect to the Revised Guidance.

Alice/Mayo—Step 1 (Abstract Idea)
Step 2A—Prongs 1 and 2 identified in the Revised Guidance

Step 2A, Prong One

Appellant contends the claims are not directed to an abstract idea. *See* Appeal Brief 15 (“Appellant respectfully submits that the claims clearly recite statutory subject matter. In view of the foregoing, Appellant respectfully requests withdrawal of the 35 U.S.C. § 101 rejection.”).

The Specification discloses in the Background Section that:

In electronic trading systems that include bids and offers for items, a bid or offer that is entered by a participant may typically be entered as available (referred to alternatively hereinafter as “clear”) to trade to other participants. Nevertheless, certain known trading systems may restrict the availability to certain participant(s) under certain conditions.

Specification ¶ 2.

The Specification also discloses, “It would be desirable to provide systems and methods that further define the rules or conditions that govern the interaction between trading participants when the system transitions from one trading state to a second trading state.” Specification ¶ 6.

The Specification further discloses:

First-on-the-follow rules relate in large part to identifying the participant that will have the right to trade exclusively (semi-exclusively)—i.e., the exclusive bidder on incoming offers and the exclusive offeror on incoming bids—at the commencement of the new state. It should be noted that in some embodiment of the invention, the first on the follow participant may be granted exclusive or semi-exclusive rights, depending on the rules of the trading system.

Specification ¶ 13.

Claim 1 also includes:

[1] the first trading state comprises an active trading state during which a plurality of participants at least one of negotiate and trade an item therein, and wherein the second trading state comprises a bid/offer state during which participants enter their respective bids and offers through interfaces of workstations of the participants;

[2] determining whether an existing order having first on the follow priority status at a conclusion of the first state and having a non-zero size at the conclusion of the first state qualifies for an exclusive trading priority in the second trading state with respect to an incoming contra order received after the existing order, the incoming contra order, in which the act of determining whether the existing order qualifies for an exclusive trading priority in the second trading state with respect to an incoming contra order received after the existing order comprises determining that the existing order qualifies for an exclusive trading priority in the second trading state with respect to an incoming contra order received after the existing order based on (1) the first on the follow priority status of the existing order at the conclusion of the first trading state and (2) a determination that the existing order having a non-zero size satisfies a size requirement;

[3] responsive to determining that the existing order qualifies for an exclusive trading priority in the second trading state with respect to an incoming order received after the existing order, the incoming contra order for trading exclusively to a participant associated with the existing order based on the existing order qualifying for an exclusive trading priority in the second trading state with respect to the incoming contra order;

[4] data representing an item to trade, price of the item, size of the item and last price of the item, and at the second portion of the display screen data representing market depth information which shows price and size for items that have not yet been traded and data representing bid and offer stacks indicating size of market participants that are bidding or offering at a current price; and

[5] automatically detecting whether an incoming order for an item is not clear to trade.

These steps comprise managing commercial or legal interactions (marketing or sales activities or behaviors, business relations); thus, the claim recites the abstract idea of “certain methods of organizing human activity.” *See* 2019 Revised Guidance, Section I (Groupings of Abstract Ideas)); *see* Specification ¶¶ 7, 13–15. Our reviewing court has found claims to be directed to abstract ideas when they recited similar subject matter. *See Bancorp Servs., L.L.C. v. Sun Life Assur. Co. of Can Canada (U.S.)*, 687 F.3d 1266, 1280 (Fed. Cir. 2012) (concluding that “managing a stable value protected life insurance policy by performing calculations and manipulating the results” is an abstract idea); *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014) (holding that concept of “creating a contractual relationship—a ‘transaction performance guaranty’” is an abstract idea); *In re Ferguson*, 558 F.3d 1359, 1364 (Fed Cir. 2009) (holding methods “directed to organizing business or legal relationships in the structuring of a sales force (or marketing company)” to be ineligible); *Credit Acceptance Corp, v. Westlake Services*, 859 F.3d 1044 at 1054 (“The Board determined that the claims are directed to the abstract idea of ‘processing an application for financing a purchase.’ . . . We agree.”). Therefore, we

conclude the claims recite an abstract idea pursuant to Step 2A, Prong One of the 2019 Revised Guidance. *See* 2019 Revised Guidance, Section III(A)(1) (Prong One: Evaluate Whether the Claim Recites a Judicial Exception)).

Step 2A, Prong Two

Under Prong Two of the 2019 Revised Guidance, we must determine “whether the claim as a whole integrates the recited judicial exception into a practical application of the exception.” 2019 Revised Guidance, Section III(A)(2). It is noted that a “claim that integrates a judicial exception into a practical application will apply, rely on, or use 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.” 2019 Revised Guidance, Section III(A)(2).

Appellant argues:

[T]he Office Action does not consider the teachings in the specification that the claims amount to an improvement in computer performance. In one example, the claimed subject matter is directed to **facilitating electronic trading over a network that includes updating different portions of display screens of workstations with visual indicators** which may help reduce the number of transactions or cleared trades over the network.

Appeal Brief 12.

Appellant further argues:

As with the patents upheld in *CoreWireless*⁴, Appellant respectfully submits that Appellants' claimed subject matter is also drawn to an **improved interface**, which **provides advantages over the prior art systems** and improves the efficiency of the electronic devices, thereby overcoming **disadvantages of prior systems**. That is, the claimed subject matter is drawn to an **improved interface** that **provides advantages over the prior art systems** including improving the efficiency of the electronic devices, thereby **overcoming disadvantages of prior systems**.

Appeal Brief 17.

Claim 1 recites “causing to display, on a first portion and a second portion of a display screen of an interactive trading interface of a workstation of a participants . . . in response to detecting that an incoming order is not clear to trade, automatically updating the display screen with a visual indicator adjacent to a price associated with a new order.” The claim’s recitation of displaying data is unlike patent-eligible claims directed to displaying data such as the claimed user interface in *Core Wireless*. In *Core Wireless*, the court held that claims which recited an interface were patent eligible because the claims recited specific limitations of the interface such as: an application summary that can be reached through a menu, the data being in a list and being selectable to launch an application, and additional limitations directed to the actual user interface displayed and how it functions. *Core Wireless*, 880 F.3d at 1363. The court found that the claims were directed to an improved user interface and not the abstract concept of an index because the claim “limitations disclose a specific manner of displaying a limited set of information to the user, rather than

⁴ *Core Wireless Licensing S.A.R.L. v. LG Electronics MobileComm U.S.A., Inc.* (Fed. Cir. 2018).

using conventional user interface methods to display a generic index on a computer.” *Core Wireless*, 880 F.3d at 1363; *see also Trading Tech v. CQG, Inc.*, 675 Fed. Appx. 1001 (Fed. Cir. 2017) (holding that a user interface with a prescribed functionality directly related to the interface’s structure, that is addressed to and resolves a problem in the art, is patent eligible). In Appellant’s claim 1, there are no limitations directed to a specific manner of displaying a limited set of information to the user or to how the user interacts with the displayed data and, therefore, we find Appellant’s arguments unpersuasive.

Appellant contends the claims do not preempt all processes for achieving the intended result of the invention. Appeal Brief 20. The Supreme Court has described “the concern that drives this exclusionary principle [i.e., the exclusion of abstract ideas from patent eligible subject matter] as one of pre-emption.” *Alice*, 573 U.S. at 216. However, characterizing preemption as a driving concern for patent eligibility is not the same as characterizing preemption as the sole test for patent eligibility. As our reviewing court has explained, “[t]he Supreme Court has made clear that the principle of preemption is the basis for the judicial exceptions to patentability,” and “[f]or this reason, questions on preemption are inherent in and resolved by the § 101 analysis.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (citing *Alice*, 573 U.S. at 216). And, although “preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.” *Id.* Moreover, “[w]here a patent’s claims are deemed only to disclose patent ineligible subject matter under the [*Alice/Mayo*] framework . . . , preemption concerns are fully addressed and made moot.” *Id.*; *see also OIP Techs., Inc.*

v. Amazon.com, Inc., 788 F.3d 1359, 1362–63 (Fed. Cir. 2015) (“[T]hat 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.”).

In *McRO*⁵, the Federal Circuit concluded that the claim, when considered as a whole, was directed to a “technological improvement over the existing, manual 3-D animation techniques” through the “use [of] limited rules . . . specifically designed to achieve an improved technological result in conventional industry practice.” *McRO*, 837 F.3d at 1316; *see* Appeal Brief 20. Specifically, the Federal Circuit found that the claimed rules allow computers to produce accurate and realistic lip synchronization and facial expressions in animated characters that previously could only be produced by human animators; and the rules are limiting because they define morph weight sets as a function of phoneme sub-sequences. *McRO*, 837 F.3d at 1313 (internal citations omitted).

We find no evidence of record here that the present situation is like the one in *McRO* where computers were previously unable to make certain subjective determinations, i.e., regarding morph weight and phoneme timings, which could only be made prior to the claimed invention by human animators. *See* Appeal Brief 15. The Background section of the *McRO* ‘576 patent includes a description of the admitted prior art method and the shortcomings associated with that prior method. *See McRO*, 837 F.3d at 1303–06. There is no comparable discussion in Appellant’s Specification or elsewhere of record.

⁵ *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1303 (Fed. Cir. 2016).

Additionally, we detect no additional element (or combination of elements) recited in Appellant’s representative claim 1 that integrates the judicial exception into a practical application. *See* 2019 Revised Guidance, Section III(A)(2). For example, Appellant’s claimed additional elements (e.g., workstations, network, computing device, display screen) do not: (1) improve the functioning of a computer or other technology; (2) are not applied with any particular machine (except for a generic computer device); (3) do not effect a transformation of a particular article to a different state; and (4) are not applied in any meaningful way beyond generally linking the use of the judicial exception to a particular technological environment, such that the claim as a whole is more than a drafting effort designed to monopolize the exception. *See* MPEP §§ 2106.05(a)–(c), (e)–(h).

Accordingly, we determine the claim does not integrate the recited judicial exception into a practical application. *See* 2019 Revised Guidance, Section III(A)(2) (Prong Two: If the Claim Recites a Judicial Exception, Evaluate Whether the Judicial Exception Is Integrated Into a Practical Application)).

Alice/Mayo—Step 2 (Inventive Concept)
Step 2B identified in the 2019 Revised Guidance

Next, we determine whether the claim includes additional elements that provide significantly more than the recited judicial exception, thereby providing an inventive concept. *Alice*, 573 U.S. at 217–18 (*quoting Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 72–73 (2012)).

Appellant argues the “that the ‘significantly more’ analysis in the Final Rejection is not consistent with the USPTO guidelines (*Berkheimer v. HP, Inc.*). Reply Brief 2; *see* USPTO Memorandum of April 19, 2018,

“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> (the “*Berkheimer* Memorandum”). Appellant further argues, “that the Examiner’s Answer does not consider the teachings in the specification that the claims amount to an improvement in computer performance.” Reply Brief 2.

Revised Guidance, Section III (B) (footnote 36) states (emphasis added):

In accordance with existing guidance, an examiner’s conclusion that an additional element (or combination of elements) is well understood, routine, conventional activity must be supported with a factual determination. For more information concerning evaluation of well-understood, routine, conventional activity, see MPEP 2106.05(d), as modified by the USPTO *Berkheimer* Memorandum.

The *Berkheimer* Memorandum Section III (A) states, when formulating rejections, “[i]n a step 2B analysis, an additional element (or combination of elements) is not well-understood, routine or conventional unless the examiner finds, and expressly supports a rejection in writing.” The *Berkheimer* Memorandum provides four criteria for the Examiner to utilize to provide support for the additional elements to be considered to be well-understood, routine or conventional.⁶

⁶ *Berkheimer* Memorandum Section III (A) (1. A citation to an express statement in the specification or to a statement made by an applicant during prosecution that demonstrates the well-understood, routine, conventional nature of the additional element(s); 2. A citation to one or more of the court decisions discussed in MPEP § 2106.05(d)(II) as noting the well-understood, routine, conventional nature of the additional element(s); 3. A citation to a

Appellant does not challenge the Examiner's position that the additional elements are well-understood, routine or conventional in accordance with the Berkheimer Memorandum. *See* Reply Brief 1–5. However, it is noted that the Examiner determines that “Generic computer components recited as performing generic computer functions that are well-understood, routine and conventional activities amount to no more than implementing the abstract idea with a computerized system.” Final Action 18–19. The Examiner supports the determination by citing to Appellant's Specification and to one or more court decisions. *See* Final Action 16–18.

Consequently, we do not find Appellant's argument persuasive because, in determining if the additional element (or combination of additional elements) represents well-understood, routine, or conventional activity, the Examiner supported the determination based upon a factual determination as specified in the *Berkheimer* Memorandum. *See Berkheimer* Memorandum Section III (A)(1),(2).

Appellant notes Judge Newman's non-binding concurrence in *Bascom Global Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1352 (Fed. Cir. 2016). *See* Appeal Brief 21 (“Appellant is aware that concurring opinions are not binding, but it is well established that concurring opinions from the CAFC or the Supreme Court are persuasive authority, when the concurrence is relevant to the facts of a case.”). Based upon Judge Newman's concurrence, Appellant contends, “The lack of prior art citations

publication that demonstrates the well-understood, routine, conventional nature of the additional element(s) and 4. A statement that the examiner is taking official notice of the well-understood, routine, conventional nature of the additional element(s).)

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 Brief 21.

We note, as the Federal Circuit has explained, a “claim for a *new* abstract idea is still an abstract idea.” *Synopsis, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (Fed. Cir. 2016). Even assuming the technique claimed was “[g]roundbreaking, innovative, or even brilliant,” that would not be enough for the claimed abstract idea to be patent eligible. *See Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 591 (2013).

In *Bascom*⁷, our reviewing court found that, while the claims of the patent were directed to an abstract idea, the patentee alleged an “inventive concept can be found in the ordered combination of the claim limitations that transform the abstract idea of filtering content into a particular, practical application of that abstract idea.” *Bascom*, 827 F.3d at 1352. In particular, the patent claimed “a technology-based solution (not an abstract-idea-based solution implemented with generic technical components in a conventional way) to filter content on the Internet that overcomes existing problems with other Internet filtering systems.” *Bascom*, 827 F.3d at 1351. Claim 1 is immediately distinguishable, as it recites an abstract-idea-based solution, that is, an electronic trading method, implemented with generic technical components (workstations, network, computing device, display screen), in a conventional way. (*See generally* Specification). Therefore, we are not persuaded that ordered combinations of steps in claim 1 provide an inventive concept. *See* 2019 Revised Guidance at 56.

⁷ *Bascom Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016.)

Accordingly, we conclude that claims 1–8 and 24–35 are directed to managing commercial or legal interactions (marketing or sales activities or behaviors; business relations), which are considered methods of organizing human activity identified in the 2019 Revised Guidance, and thus an abstract idea, and that the claims do not recite limitations that amount to significantly more than the abstract idea itself. We sustain the Examiner’s § 101 rejection of claims 1–8 and 24–35.

CONCLUSION

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–8, 24–35	101	Eligibility	1–8, 24–35	

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

AFFIRMED