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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SCOTT M. LOVING, DINESH K. PRAKASHCHAND,
JUSTIN M. HARLOW, MINGSHI ZHOU,
LOC Q. DO, and TRAVIS B. WEISLEDER

Appeal 2018-008623
Application 11/786,543¹
Technology Center 3600

Before ANTHONY W. FETTING, JOSEPH A. FISCHETTI,
and BIBHU R. MOHANTY, *Administrative Patent Judges*.

FISCHETTI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134 of the Examiner's Final rejection of claims 1, 2, 4–8, 10–14, 22, 23, 25–28, 30–32 and 37–39. 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. Appellant identifies IFMG-IP, LLC as the real party in interest. Appeal Br. 1.

SUMMARY OF DECISION

THE INVENTION

Appellant states, “the present invention relate[s] generally to systems and methods for routing loan application information electronically and, more particularly, to loan application information routing systems and methods with real-time credit check and demographics augmentation.”

Spec. ¶ 2.

Claim 1, reproduced below, is representative of the subject matter on appeal.

1. A system comprising:

a storage device;

a first database structure in the storage device, wherein information regarding multiple automobile dealerships is stored in the first database structure;

a second database structure in the storage device, wherein information regarding multiple affiliate entities from which leads can be received is stored in the second database structure;

a receiving device communicatively coupled to a data network and configured to receive a lead electronically from at least one affiliate entity whose information is stored in the second database structure, wherein the lead comprises information relating to a party seeking to purchase an automobile with a loan;

a processing device communicatively coupled to the receiving device, the first database structure, and the second database structure, the processing device configured to, in real time:

determine that the lead has been received via a secure connection;

validate the lead received via the receiving device and the secure connection, wherein the processing device is configured to validate the lead by verifying that the information in the lead is formatted in a manner usable by a remote credit checking system;

based on the lead being validated,

configure a transmitting device that is communicatively coupled to the data network to transmit at least a portion of the information from the lead to a first network location corresponding to the remote credit checking system via the data network for a credit check;

access credit information regarding the party received by the receiving device in response to the transmission;

select, from the first database structure and based at least in part on the credit information, an automobile dealership, from the multiple automobile dealerships, to receive the lead; and

configure the transmitting device to transmit the lead to a second network location corresponding to the automobile dealership that was selected.

THE REJECTION

The following rejection is before us for review.

Claims 1, 2, 4–8, 10–14, 22, 23, 25–28, 30–32 and 37–39 are rejected under 35 U.S.C. § 101.

FINDINGS OF FACT

We adopt the Examiner’s findings as set forth on pages 2–8 in the Final Office Action² and on pages 3–18 in the Examiner’s Answer, concerning the 35 U.S.C. § 101 rejection.

35 U.S.C. § 101 REJECTION

We will affirm the rejection of claims 1, 2, 4–8, 10–14, 22, 23, 25–28, 30–32, 37–39 under 35 U.S.C. § 101.

The Appellant argues claims 1, 2, 4–8, 10–14, 22, 23, 25–28, 30–32 as a group. Appeal Br. 7. We select claim 1 as the representative claim for this group, and so the remaining claims stand or fall with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2015).

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

² All references to the Final Office Action, refer to the Final Office Action mailed on December 16, 2016 (“Final Act.”).

In determining whether a claim falls within an excluded category, we are guided by the Supreme Court’s two-step framework, described in *Mayo* and *Alice*. *Alice*, 573 U.S. at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–77 (2012)). In accordance with that framework, we first determine what concept the claim is “directed to.” See *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 water-proof cloth, vulcanizing India rubber, smelting ores” (*id.* at 182 n.7 (quoting *Corning v. Burden*, 56 U.S. 252, 267–68 (1854))); and manufacturing flour (*Benson*, 409 U.S. at 69 (citing *Cochrane v. Deener*, 94 U.S. 780, 785 (1876))).

In *Diehr*, the claim at issue recited a mathematical formula, but the Supreme Court held, *Diehr*, 450 U.S. at 187, 191 (“We view respondents’ claims as nothing more than a process for molding rubber products and not as an attempt to patent a mathematical formula.”). Having said that, the Supreme Court also held that “a claim drawn to subject matter otherwise

statutory does not become nonstatutory simply because it uses a mathematical formula.” *Diehr* 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.” *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.”) and 191 (citing *Benson* and *Flook*).

If the claim is “directed to” an abstract idea, we turn to the second step of the *Alice* and *Mayo* framework, where “we must examine the elements of the claim to determine whether it contains an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Alice*, 573 U.S. at 221 (quotation 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.* (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.*

In January 2019, the U.S. Patent and Trademark Office (USPTO) published revised guidance on the application of 35 U.S.C. § 101. 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Guidance, 84 Fed. Reg.”).³ “All USPTO personnel are, as a matter

³ 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

of internal agency management, expected to follow the guidance.”

Guidance, 84 Fed. Reg. 51; *see also* October 2019 Update, 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”).⁴

Guidance, 84 Fed. Reg. 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:

- (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 Update”) (available at https://www.uspto.gov/sites/default/files/documents/peg_oct_2019_update.pdf).

⁴ 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* Guidance, 84 Fed. Reg. 54–55, Section III(A)(2).

Guidance, 84 Fed. Reg. 52–56. The U.S. Court of Appeals for the Federal Circuit has explained that “the ‘directed to’ inquiry applies a stage-one filter to claims, considered in light of the [S]pecification, based on whether ‘their character as a whole is directed to excluded subject matter.’” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016) (quoting *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015)). It asks whether the focus of the claims is on a specific improvement in relevant technology or on a process that itself qualifies as an “abstract idea” for which computers are invoked merely as a tool. *See Enfish*, 822 F.3d at 1335–36.

In so doing, as indicated above, we apply a “directed to” two prong test: 1) evaluate whether the claim recites a judicial exception, and 2) if the claim recites a judicial exception, evaluate whether the claim “appl[ies], [relies] on, or use[s] the judicial exception in a manner that imposes a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception.” Guidance, 84 Fed. Reg. 53; *see also* MPEP § 2106.05(a)–(c), (e)–(h).

The Specification states:

Statistics show that, due to their credit scores, over 80% of individuals who finance cars with a loan obtain indirect loans from a lender (e.g., bank, finance company, or credit union). With an indirect car loan, the lender requires the car to be purchased from an approved car dealership. Thus, traditionally employees of the car dealership generate all of the loan application paperwork and then send that information to the lender. Car dealership employees also run credit bureau reports for loan applicants, schedule follow-up appointments, and track sales performance of the dealership. This is a labor-intensive process that increases the overhead cost to the dealer and thus the purchase price of the car. The time commitment required

by the car dealership to generate loan applications can also cause the dealer to turn away a customer prematurely if there is a question whether the customer will ultimately qualify for a loan. Individuals with less than perfect credit may also hesitate to apply for a car loan to avoid the unpleasant experience of having their loan application rejected.

Spec. ¶ 3.

The Examiner found that “claim 1 is directed to a system for processing a lead that relating to a party seeking to purchase an automobile with a loan, which corresponds to concepts identified as abstract ideas by the courts, such as processing loan information (*Dealertrack*).” *See Dealertrack v. Huber* 674 F.3d 1315, (Fed. Cir. 2012); *see also* Final Act. 3.

Claim 1 recites in pertinent part,

information regarding multiple automobile dealerships[]; ...information regarding multiple affiliate entities from which leads can be received is stored[]; receive a lead . . . from at least one affiliate entity[], wherein the lead comprises information relating to a party seeking to purchase an automobile with a loan; . . . determine that the lead has been received[]; validate the lead received by verifying that the information in the lead is formatted in a manner usable by a remote credit checking system; based on the lead being validated, . . . transmit at least a portion of the information from the lead to . . . the remote credit checking system . . . for a credit check; access credit information regarding the party[]; select, . . . based at least in part on the credit information, an automobile dealership, from the multiple automobile dealerships, to receive the lead; and []transmit the lead to . . . the automobile dealership that was selected.

Accordingly, we determine that claim 1 recites a credit based review process of buyers for filtering leads of buyers as being credit worthy before being referred to a seller. As such, we determine the claims recite a

fundamental economic practice of prequalifying purchasers because it recites, “validat[ing] the lead received by verifying that the information in the lead is formatted in a manner usable by a remote credit checking system;” “based on the lead being validated, transmit at least a portion of the information from the lead to . . . the remote credit checking system . . . for a credit check;” “access credit information regarding the party[];” “select,[] based at least in part on the credit information, an automobile dealership, from the multiple automobile dealerships, to receive the lead;” and “. . . transmit the lead to . . . the automobile dealership that was selected.”

Fundamental economic practice is one of the certain methods of organizing human activity, a judicial exception. Appeal Br. 23–24 (Claims App.); *see also* Guidance, 84 Fed. Reg. 55 (citing *Alice*, 573 U.S. at 219–20).

Turning to the second prong of the “directed to” test, claim 1 only generically requires “a storage device,” “a first database structure in the storage device,” “a second database structure in the storage device,” “a transmitting device,” “a receiving device,” “a processing device,” “a remote credit checking system,” and “a data network.” These components are described in the Specification at a high level of generality. *See* Spec. ¶¶ 22, 23, 28–31, and Fig. 1. We fail to see how the generic recitations of these most basic computer components and/or of a system so integrates the judicial exception as to “impose[] a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception.” Guidance, 84 Fed. Reg. 53.

Thus, we find that the claims recite the judicial exception of a certain method of organizing human activity that is not integrated into a practical application.

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

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

Concerning this step the Examiner found the following:

The additional limitations of the claim includes a storage device, a first and a second databases, a receiving device, a processing device and a transmitting device. These components of the claim are recited at a high level of generality to simply perform the functions of storing information of multiple automobile dealerships in the databases, receiving information of a lead, in real time perform the functions of: determining and validating the received lead, transmitting the lead for a credit check, accessing credit information regarding the party, selecting an automobile dealership to receive the lead, and transmitting the lead to the automobile dealership that was selected, which are not seen to be improvements to another technology or technical field, improvements to the functioning of the computer itself, do not provide meaningful limitations beyond general linking the use of an abstract idea to a particular technological environment; or adding a specific limitation other than what is well-understood, routine and conventional in the field, or adding unconventional steps that confine the claim to a

particular useful application. Rather, these additional limitations of the claim perform the functions to be well-understood, routine, and conventional functions:

- receiving, processing, and storing data, and
- receiving or transmitting data over a network, e.g., using the Internet to gather data.

Thus, nothing more than receiving the lead information, determining and validating the received lead, check the lead with the credit information, select the automobile dealership to receive the lead based on the credit check, and transmitting the lead to the automobile dealership that was selected. Thus, nothing more than processing the lead, organizing and transmitting the lead. So, these additional limitations of the claim add nothing significantly more than the identified abstract idea. So, these additional limitations of the claim are the tools that merely used to implement the abstract ideas. Therefore, when viewed either individually, or as an ordered combination, the additional limitations of the claim do not amount to a claim as a whole that is significantly more than the abstract idea (Step 28: NO). Thus, the claim is not eligible

Final Act. 3–4 (emphasis and footnotes ommitted). We agree with the Examiner. “[T]he relevant question is whether the claims here do more than simply instruct the practitioner to implement the abstract idea . . . on a generic computer.” *Alice*, 573 U.S. at 225. They do not.

Taking the claim elements separately, the function performed by the computer at each step of the process is purely conventional. Using a computer to recieve, determine, validate, transmit, select, and apply decision criteria to data as a result amounts to electronic data query and retrieval— one of the most basic functions of a computer. All of these computer functions are well-understood, routine, conventional activities previously

known to the industry. *See Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016); *see also In re Katz Interactive Call Processing Patent Litig.*, 639 F.3d 1303, 1316 (Fed. Cir. 2011) (“Absent a possible narrower construction of the terms ‘processing,’ ‘receiving,’ and ‘storing,’ . . . those functions can be achieved by any general purpose computer without special programming”). In short, each step does no more than require a generic computer to perform generic computer functions. The claims do not, for example, purport to improve the functioning of the computer itself. In addition, as we stated above, the claims do not affect an improvement in any other technology or technical field. The Specification spells out different generic equipment and parameters that might be applied using this concept and the particular steps such conventional processing would entail based on the concept of information access under different scenarios. *See, e.g.*, Spec. ¶¶ 22, 23, 28–31, and Fig. 1. Thus, the claims at issue amount to nothing significantly more than instructions to apply the abstract idea using some unspecified, generic computer. Under our precedents, that is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 573 U.S. at 225–226.

Considered as an ordered combination, the computer components of Appellant’s claims add nothing that is not already present when the steps are considered separately. The sequence of data reception-analysis (receive, determine, validate, transmit, select, transmit) and storing is equally generic and conventional or otherwise held to be abstract. *See Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014) (sequence of receiving, selecting, offering for exchange, display, allowing access, and receiving payment recited an abstraction); *see also Inventor Holdings, LLC v. Bed*

Bath & Beyond, Inc., 876 F.3d 1372, 1378 (Fed. Cir. 2017) (holding that sequence of data retrieval, analysis, modification, generation, display, and transmission was abstract); and *Two-Way Media Ltd. v. Comcast Cable Commc 'ns, LLC*, 874 F.3d 1329, 1339 (Fed. Cir. 2017) (holding sequence of processing, routing, controlling, and monitoring was abstract). The ordering of the steps is, therefore, ordinary and conventional.

We have reviewed all the arguments the Appellant has submitted concerning the patent eligibility of the claims before us that stand rejected under 35 U.S.C. § 101. Appeal Br. 7–21; *see also* Reply Br. 1–6. We find that our analysis above substantially covers the substance of all the arguments, which have been made. But, for purposes of completeness, we will address various arguments in order to make individual rebuttals of same.

Appellant argues, “the first step of the subject-matter eligibility analysis requires more than a claim that merely involves an abstract idea, and instead requires that the claim language as a whole must be directed to the abstract idea.” Appeal Br. 8.

Although we agree with the Appellant that the claims must be read, as a whole, we nevertheless find, on balance, that claim 1 is directed to an opt-in method of managing billed transactions for the reasons specified above with respect to our “directed to” findings. As found *supra*, claim 1 only includes the following generically recited device limitations: “a storage device,” “a first database structure in the storage device,” “a second database structure in the storage device,” “a transmitting device,” “a receiving device,” “a processing device,” “a remote credit checking system,” and “a data network.” What remains in the claim after disregarding these generic

device limitations, are abstractions, i.e., “select, . . . based at least in part on the credit information, an automobile dealership, from the multiple automobile dealerships, to receive the lead.” Appeal Br. 23–24 (Claims App.) “A claim for a new abstract idea is still an abstract idea.” *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (Fed. Cir. 2016) (citing *Mayo*, 566 U.S. at 90). To the extent that the Appellant is arguing that these are additional elements constituting an inventive concept, such features cannot constitute the “inventive concept.” *Berkheimer v. HP, Inc.*, 890 F.3d 1369, 1374 (Fed. Cir. 2018) (Moore, J., concurring) (“It is clear from *Mayo* that the ‘inventive concept’ cannot be the abstract idea itself, and *Berkheimer* . . . leave[s] untouched the numerous cases from this court which have held claims ineligible because the only alleged ‘inventive concept’ is the abstract idea.”); *see also BSG Tech. LLC v. BuySeasons, Inc.*, 899 F.3d 1281, 1290 (Fed. Cir. 2018) (“It has been clear since *Alice* that a claimed invention’s use of the ineligible concept to which it is directed cannot supply the inventive concept that renders the invention ‘significantly more’ than that ineligible concept.”).

Appellant argues:

[i]ndeed, at Step 1 of the eligibility analysis, the Examiner simply ignored the claim language altogether, thereby repeating the error identified by the court in *Enfish*. Therefore, the Examiner failed to include a sufficient explanation of why the subject matter to which the claims ***are actually directed*** constitutes an abstract idea, and erroneously deprived the Appellant of an opportunity to explain why the features of the claims are not directed to an abstract idea.

Appeal Br. 11.

We disagree with Appellant because the claims as a whole are

directed to what the Examiner found. (Final Act. 3). Under step one of the *Alice* framework, we “look at the ‘focus of the claimed advance over the prior art’ to determine if the claim’s ‘character as a whole’ is directed to excluded subject matter.” *Affinity Labs of Texas, LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1257 (Fed. Cir. 2016) (quoting *Elec. Power*, 830 F.3d at 1353). In other words, the first step of the *Alice* framework “asks whether the focus of the claims is on the specific asserted improvement in [the relevant technology] or, instead, on a process that qualifies as an ‘abstract idea’ for which computers are invoked merely as a tool.” *Id.* at 1335–36; *see also* Guidance, 84 Fed. Reg. 54–55. We we found above in our “claims as a whole” analysis, what remains in claim 1 after disregarding these generic device limitations, are abstractions, i.e., “select, . . . based at least in part on the credit information, an automobile dealership, from the multiple automobile dealerships, to receive the lead.” Appeal Br. 23–24 (Claims App.).

Second, “[a]n abstract idea can generally be described at different levels of abstraction.” *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1240–1241 (Fed. Cir. 2016). Thus, language which Appellant asserts has been ignored by the Examiner would probably be seen by the Examiner at a diiferent level of abstraction of that of Appellant.

And, we are not persuaded that the rejection is so uninformative as to fail to comply with the notice requirement of 35 U.S.C. § 132 — the standard by which the sufficiency of the Examiner’s rejection is properly assessed. *See In re Jung*, 637 F.3d 1356, 1362 (Fed. Cir. 2011). Thus, all that is required of the Office is that it sets forth the statutory basis of the rejection in a sufficiently articulate and informative manner as to meet the

notice requirement of § 132. *Id.*; see also *Chester v. Miller*, 906 F.2d 1574, 1578 (Fed. Cir. 1990) (“Section 132 is violated when a rejection is so uninformative that it prevents the applicant from recognizing and seeking to counter the grounds for rejection.”). As we found above, the Examiner has made the necessary findings to comply with the notice requirement of 35 U.S.C. § 132. (See Final Act. 3).

Appellant argues,

[h]ere, unlike the claims in *Dealertrack*, the claims recite a specific application and details about how hardware and databases are used to implement the invention and therefore place meaningful limits on claim scope. The *Dealertrack* claims did not specify how the hardware and database are specially programmed to perform the steps claimed in the patent.

Appeal Br. 12. Appellant then goes on to argue:

Unlike the claims in *Dealertrack*, the claims do not simply recite “computer-aided,” which the *Dealertrack* court found to be lacking because “[i]n order for the addition of a machine to impose a meaningful limit on the scope of a claim, it must play a significant part in permitting the claimed method to be performed.”

See Appeal Br. 13; see also *Dealertrack*, 674 F.3d at 1334.

We disagree with Appellant because we do not find any indication in the Specification, nor does Appellant direct us to any indication, that the operations recited in independent claim 1 invoke any inventive programming, require any specialized computer hardware or other inventive computer components, i.e., a particular machine, or that the claimed invention is implemented using other than generic computer components to perform generic computer functions. See *DDR Holdings, LLC v. Hotels.com, L.P.* 773 F.3d 1245 (Fed. Cir. 2014) (“[A]fter *Alice*, there can

remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible.”). The claim simply recites functional results to be achieved by any means, albeit named elements but generically functioning without specificity, e.g., “a processing device communicatively coupled to the receiving device.”

In *Dealertrack Inc.*, the claims were found to be directed to “a clearing house concept.” *Dealertrack*, 674 F.3d at 1333. Both a “clearinghouse” and, the claimed “credit checking system,” are similarly tied to fundamental economic principles. Our reviewing court has found claims to be directed to abstract ideas when they recite similar subject matter. *Credit Acceptance Corp. v. Westlake Servs.*, 859 F.3d 1044, 1055 (Fed. Cir. 2017) (customer purchase transaction).

[T]he claims here recite only that the method is “computer aided” without specifying any level of involvement or detail. The fact that certain algorithms are disclosed in the specification does not change the outcome. In considering patent eligibility under [section] 101, one must focus on the claims. This is because a claim may “preempt” only that which the claims encompass, not what is disclosed but left unclaimed.

Dealertrack, 674 F.3d at 1334.

Appellant argues that “[t]he non-obviousness of the claims shows that they include features amounting to significantly more than any abstract idea.” Appeal Br. 14–15, and 20.

We disagree with Appellant. Although the second step in the *Mayo/Alice* framework is termed a search for an “inventive concept,” the analysis is not an evaluation of novelty or non-obviousness, but rather, a search for “an element or combination of elements that is ‘sufficient to

ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.” *Alice Corp.*, 573 U.S. at 217–18 (citation omitted). “Groundbreaking, innovative, or even brilliant discovery does not by itself satisfy the [section] 101 inquiry.” *Association for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 591 (2013). A novel and non-obvious claim directed to a purely abstract idea is, nonetheless, patent-ineligible. *See Mayo*, 566 U.S. at 90; *see also Diamond v. Diehr*, 450 U.S. 175, 188–89 (1981) (“The ‘novelty’ of any element or steps in a process, or even of the process itself, is of no relevance in determining whether the subject matter of a claim falls within the [section] 101 categories of possibly patentable subject matter.”).

Appellant argues:

[t]his technical field is established by the specification, which notes that electronic data processing systems are used for completing electronic transactions, such as loan applications. (Specification ¶¶3–8, 63). The [S]pecification further explains that transaction performed using these electronic data processing systems facilitate the completion of these transactions when remote system are involved (e.g., by reducing a time required for completion of an electronic loan application process). Specification ¶ 5.

...

Accordingly, because claims 1, 2, 4-8, 10-14, 22, 23, 25-28, and 30-32 effect an improvement to a technical field and therefore amount to significantly more than the alleged abstract idea, the claims recite patentable subject matter.

Appeal Br. 15.

We disagree with Appellant. We have reviewed the Specification and, as explained above, we can find no suggestion of any technical improvements associated with the performance of the recited steps. The

Specification is focused on obtaining certain credit worthy–related information, not on the “storage device,” “first database structure in the storage device,” “second database structure in the storage device,” “transmitting device,” “receiving device,” “processing device,” “remote credit checking system,” and “data network.” Rather than focusing on these elements, the Specification focuses on the credit information to be retrieved, the database and user interface acting merely as conduits for its retrieval. *Cf. In re TLI Communications LLC Patent Litigation*, 823 F.3d at 612 (Fed. Cir. 2016). Absent evidence to the contrary, we view “electronic data processing systems” to be only an indication of the environment in which the abstract idea is practiced. See, MPEP § 2106.05(h).

Claim 37 is a system claim, and as such, it is a structural claim, and it is

no different from the method claims in substance. The method claims recite the abstract idea implemented on a generic computer; the system claims recite a handful of generic computer components, [“at least one database structure, server, a processing device,] configured to implement the same idea. This Court has long “warn[ed] . . . against” interpreting § 101 “in ways that make patent eligibility ‘depend simply on the draftsman’s art.’”

Alice, 573 U.S. at 226.

The recitation of “a extensible markup language (“XML” document electronically via a Secure Socket layer (“SSL”))” is meaningful beyond the face of the language itself other than being the way that data are carried within the network. See Appeal Br. 17–19. There is no further discussion in the Specification of the particular technology for performing this claimed step. See *Affinity*, 838 F.3d at 1253; see also *Enfish, LLC*, 822 F.3d at 1336 (Focusing on whether the claim is “an improvement to the computer

functionality itself, not on economic or other tasks for which a computer is used in its ordinary capacity.”)

Appellant’s argument directed to the applicability of *Dealertrack* and *Enfish* to claim 37 are unpersuasive for the same reasons we give above for claim 1.

Finally, Appellant argues, “[t]hese disclosures show that the claims provide improvements to the technical field of real-time data-processing systems used for facilitating electronic transactions by remote systems.” (Appeal Br. 21).

We disagree with Appellant because it is well settled that gathering, analyzing, and displaying data, including in “real time”, using conventional, generic technology cannot constitute an inventive concept.

The claims in this case specify what information in the power-grid field it is desirable to gather, analyze, and display, including in “real time[;]” but they do not include any requirement for performing the claimed functions of gathering, analyzing, and displaying in real time by use of anything but entirely conventional, generic technology. The claims therefore do not state an arguably inventive concept in the realm of application of the information-based abstract ideas.

Electric Power, 830 F.3d at 1356 (.

For the reasons identified above, we determine there are no deficiencies in the Examiner’s prima facie case of patent ineligibility of the rejected claims. Therefore, we will sustain the Examiner’s 35 U.S.C. § 101 rejection of claims 1, 2, 4–8, 10–14, 22, 23, 25–28, 30–32 and 37–39.

CONCLUSIONS OF LAW

We conclude the Examiner did not err in rejecting claims 1, 2, 4–8, 10–14, 22, 23, 25–28, 30–32 and 37–39 under 35 U.S.C. § 101.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1, 2, 4-8, 10-14, 22, 23, 25-28, 30-32, 37-39	101	Eligibility	1, 2, 4-8, 10-14, 22, 23, 25-28, 30-32, 37-39	

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