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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* VICTOR MOROZ, STEPHEN LEE SMITH, YONG-SEOG OH,  
MICHAEL C. SHAUGHNESSY-CULVER, JIE LIU,  
and TERRY SYLVAN KAM-CHIU MA

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Appeal 2018-008937  
Application 14/906,543  
Technology Center 2800

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Before MAHSHID D. SAADAT, LINZY T. McCARTNEY, and  
NORMAN H. BEAMER, *Administrative Patent Judges*.

SAADAT, *Administrative Patent Judge*.

DECISION ON APPEAL<sup>1</sup>

Appellant<sup>2</sup> appeals under 35 U.S.C. § 134(a) from the Final Rejection of claims 21–42.<sup>3</sup> We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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<sup>1</sup> An oral hearing for this Appeal, which was scheduled to be held on July 22, 2019, has been waived.

<sup>2</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 Synopsys, Inc. Appeal Br. 4.

<sup>3</sup> Claims 1–20 have been canceled previously.

## STATEMENT OF CASE

### *Introduction*

Appellant's Specification describes a "system for evaluating candidate materials for fabrication of integrated circuits." *See Abs.*

Exemplary claim 21 under appeal reads as follows;

21. A method for swifter evaluation of candidate materials for fabrication of integrated circuits comprising:

providing a first database relating each of a plurality of candidate materials for an integrated circuit, with corresponding values for each intermediate material property in a predetermined set of intermediate material properties of the candidate materials;

providing a second database relating values of a target property of the candidate materials, with a plurality of combinations of (a) values for the intermediate material property or properties and (b) a value or values describing candidate environments for the material in an integrated circuit;

a computer system determining a value or values of the intermediate property or properties for a particular integrated circuit candidate material by reference to the first database;

a computer system determining the value of the target property for the particular candidate material in dependence upon a look-up in the second database of, in combination, (a) the determined value or values for the intermediate material property or properties for the particular candidate material and (b) a value or values describing a particular integrated circuit environment for the particular material; and

screening the particular candidate material for use in the particular integrated circuit environment, in dependence upon a comparison between the determined target property for the particular candidate material in the particular integrated circuit environment, and predetermined criteria for adequacy,

wherein the predetermined set of intermediate material properties constitutes one or members of the group consisting

of bandgap ( $E_g$ ), effective mass ( $m^*$ ), gate dielectric band gap band offset for the conduction and valence bands for n- and p-type transistors, injection velocity, ballisticity, surface roughness scattering, and uniformity of the candidate material,

wherein the candidate environments for the material constitute one or members of the group consisting of bias conditions, an aspect of a design rule database, an aspect of transistor geometry, stress, and a technology node,

and wherein the target property constitutes a member of the group consisting of Band-To-Band Tunneling (BTBT), Direct Source-to-Drain Tunneling (DSDT), gate stack leakage, a transistor figure of merit, transistor drive current, and transistor switching speed.

### *Rejection on Appeal*

Claims 21–42 stand rejected under 35 U.S.C. § 101 for being directed to patent-ineligible subject matter. *See* Final Act. 2–5.

## ANALYSIS

### *Contentions*

The Examiner determines that the claims are directed to “an abstract idea implemented at least in part on a generic computer system.” Final Act.

#### 2. The Examiner finds:

The steps of providing, determining, and screening are all data manipulation using computer programming which is complex mathematical operations to perform calculations, which in turn is an abstract idea. The claims do not recite limitations that are “significantly more” than the abstract idea because the claims do not recite an improvement to another technology or technical field, an improvement to the functioning of the computer itself, or any meaningful limitations beyond generally linking the use of the abstract idea to a particular technological environment. The limitations are merely instructions to implement the abstract idea on a computer and require no more than a generic

computer to perform generic computer functions that are well-understood, routine and conventional activities previously known to the industry. Therefore, claims 21-22 are directed to non-statutory subject matter.

Final Act. 2–3. With respect to the additional elements and whether they amount to significantly more than the judicial exception, the Examiner finds other limitations do not include “an improvement to another technology or technical field, an improvement to the functioning of the computer itself, or any meaningful limitations beyond generally linking the use of the abstract idea to a particular technological environment.” Final Act. 4; *see also* Ans. 3. Based on these determinations, the Examiner concludes that the claims are ineligible under § 101. Final Act. 5.

Appellant argues that the claimed invention is not directed to an abstract idea because similar to the claims in *Enfish*,<sup>4</sup>

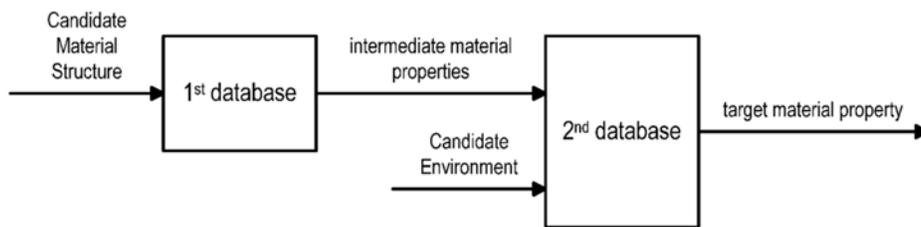
[t]he claims of the present patent application are directed to an improvement in the way computers operate, specifically in the preparation of a computer system with certain pre-calculated databases in order to drastically speed up the process of preliminary evaluation of candidate materials for use in future integrated circuit technology.

Appeal Br. 9 (emphasis omitted). According to Appellant, performing the two “providing” steps improves the computer system because “it operates much more quickly when presented with a task to evaluate and screen an arbitrary new candidate material” by further determining a value or values in the first database and determining the value of the target property based on a look-up table in the second database. Appeal Br. 9–10.

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<sup>4</sup> *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016).

Appellant adds the claims of the instant invention, instead of using a computer to perform generic functions, relies on “the specific pre-configuration of the computer system with two specific databases, and the use by the computer system of such databases to quickly perform preliminary evaluation of a specified candidate material for use in future integrated circuit technology.” Appeal Br. 15. Appellant distinguishes the claimed invention from “the conventional arrangement” of a single database by referring to a drawing reproduced below:



Appeal Br. 16. Appellant further asserts:

[T]he division of responsibility between the two databases is unconventional as well, since it derives from insight into the specific problem addressed. The insight is that some aspects of the calculation are affected by the candidate environment, whereas others are not, and the calculation can be divided into those two particular aspects without significant loss of accuracy. Thus the claims call for certain parts of the calculation that are not affected by the candidate environment to be represented in the first database, and certain parts that are affected to be represented in the second database.

*Id.*

### *Principles of Law*

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. *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014).

In determining whether a claim falls within an excluded category, we are guided by the Supreme Court’s two-step framework, described in *Mayo* and *Alice*. *Id.* 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, 69 (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 183 n.7 (quoting *Corning v. Burden*, 56 U.S. 252, 267–68 (1853))); and manufacturing flour (*Benson*, 409 U.S. at 69 (citing *Cochrane v. Deener*, 94 U.S. 780, 785 (1876))).

In *Diehr*, the claim at issue recited a mathematical formula, but the Supreme Court held that “a claim drawn to subject matter otherwise statutory does not become nonstatutory simply because it uses a

mathematical formula.” *Diehr*, 450 U.S. at 187; *see also id.* at 191 (“We view respondents’ claims as nothing more than a process for molding rubber products and not as an attempt to patent a mathematical formula.”). Having said that, the Supreme Court also indicated that a claim “seeking patent protection for that formula in the abstract . . . is not accorded the protection of our patent laws, . . . and this principle cannot be circumvented by attempting to limit the use of the formula to a particular technological environment.” *Id.* (citing *Benson* and *Flook*); *see, e.g., id.* at 187 (“It is now commonplace that an *application* of a law of nature or mathematical formula to a known structure or process may well be deserving of patent protection.”).

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

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

(1) any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human activity such as a fundamental economic practice, or mental processes); and

(2) additional elements that integrate the judicial exception into a practical application (*see* MANUAL OF PATENT EXAMINING PROCEDURE (“MPEP”) §§ 2106.05(a)–(c), (e)–(h) (9th ed. 2018)).

*See* 2019 Revised Guidance, 84 Fed. Reg. at 52, 55–56. Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, do we then look to whether the claim:

(3) adds a specific limitation beyond the judicial exception that are not “well-understood, routine, conventional” in the field (*see* MPEP § 2106.05(d)); or

(4) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.

*See* Revised Guidance, 84 Fed. Reg. at 56.

#### *The Judicial Exception – Abstract Idea*

Under the Revised Guidance, we begin our analysis by first considering whether the claims recite any judicial exceptions, including certain groupings of abstract ideas, in particular: (a) mathematical concepts, (b) mental steps, and (c) certain methods of organizing human activities. Turning to independent claim 21, we observe the claim recites, *inter alia*, the following functions:

**providing** a first database relating each of a plurality of candidate materials for an integrated circuit, with corresponding values for each intermediate material property in a predetermined set of intermediate material properties of the candidate materials;

**providing** a second database relating values of a target property of the candidate materials, with a plurality of combinations of (a) values for the intermediate material property or properties and (b) a value or values describing candidate environments for the material in an integrated circuit;

a computer system **determining** a value or values of the intermediate property or properties for a particular integrated circuit candidate material by reference to the first database;

a computer system **determining** the value of the target property for the particular candidate material in dependence upon a look-up in the second database of, in combination, (a) the determined value or values for the intermediate material property or properties for the particular candidate material and (b) a value or values describing a particular integrated circuit environment for the particular material; and

**screening** the particular candidate material for use in the particular integrated circuit environment, in dependence upon a comparison between the determined target property for the particular candidate material in the particular integrated circuit environment, and predetermined criteria for adequacy, . . . .

Claim 21 (emphases added).

Thus, we conclude the aforementioned *selecting*, *determining*, and *screening* functions could be performed alternatively as mental processes, i.e., concepts performed in the human mind or using pen and paper (including an observation, evaluation, judgment, and opinion) under the 2019 Revised Guidance, 84 Fed. Reg. at 52.<sup>5</sup> A person can perform the

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<sup>5</sup> If a method can be performed by human thought alone, or by a human using pen and paper, it is merely an abstract idea and is not patent eligible under § 101. *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1372–73 (Fed. Cir. 2011); *see also Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1146–47 (Fed. Cir. 2016) (“While the Supreme Court has altered the § 101 analysis since *Cyber Source* in cases like *Mayo* and *Alice*, we continue to ‘treat[ ] analyzing information by steps people go through in

“providing” and “determining” steps of claim 21 by using their minds (or pen and paper) in the claimed manner. For example, a person can obtain the information by memorizing or writing it down and compute the recited values based on the information contained in databases (or lookup tables) for each target property or material, using their minds or pen and paper.

We note remaining independent claims 23, 32, and 42 recite similar language of commensurate scope that we conclude also falls into the abstract idea category of a mental process including the abstract idea subcategories of an observation, evaluation, judgment, opinion. *Id.* Claim 21 recites the additional non-abstract generic limitation of a computer system, a first database, and a second database. Claims 22 and 42 recite the additional non-abstract generic limitations of a computer readable medium, a plurality of software codes for performing the functions recited in claim 21. Claim 32 recites a system including a memory and a data processor configured to perform similar functions recited in claim 21.

We also note the recited “providing” and “determining” functions of claim 21, and similar language recited in other independent claims merely access information. Courts have found such data gathering steps to be insignificant extra-solution activity. *See, e.g., In re Bilski*, 545 F.3d 943, 963 (Fed. Cir. 2008) (en banc), *aff'd sub nom Bilski*, 561 U.S. 593 (characterizing data gathering steps as insignificant extra-solution activity).

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their minds, or by mathematical algorithms, without more, as essentially mental processes within the abstract-idea category” (brackets in original) (quoting *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016).); *CyberSource*, 654 F.3d at 1375 (“That purely mental processes can be unpatentable, even when performed by a computer, was precisely the holding of the Supreme Court in *Gottschalk v. Benson*.”).

Because we conclude all claims on appeal **recite an abstract idea**, as discussed above, under *Step 2A, Prong One*, we proceed to *Step 2A, Prong Two*. Although claim 21 recites an abstract idea based on these mental processes, we, nevertheless, must still determine whether the abstract idea is integrated into a practical application, namely whether the claim applies, relies on, or uses the abstract idea in a manner that imposes a meaningful limit on the abstract idea, such that the claim is more than a drafting effort designed to monopolize the abstract idea. *See Revised Guidance*, 84 Fed. Reg. at 54–55. We, therefore, (1) identify whether there are any additional recited elements beyond the abstract idea, and (2) evaluate those elements individually and collectively to determine whether they integrate the exception into a practical application. *See id.*

*Integration of the Judicial Exception into a Practical Application*

Further pursuant to the Revised Guidance, we consider whether there are additional elements set forth in the claims that integrate the judicial exception into a practical application. *See Revised Guidance*, 84 Fed. Reg. at 54–55. We have identified *supra*, the additional non-abstract limitations recited in independent claim 21 as a computer system, a first database, and a second database.

Under MPEP § 2106.05(a) (“Improvements to the Functioning of a Computer or to Any Other Technology or Technical Field”), Appellant contends the claims amount to significantly more than an abstract idea and cites *Enfish* to support their assertion. Appeal Br. 12–15. We, however, note the court held the *Enfish* subject claims were “not directed to an abstract idea within the meaning of *Alice*.” *Enfish*, 822 F.3d at 1336. The court concluded the claims were directed to “a specific *improvement to the*

*way computers operate, embodied in the self-referential table*” (emphases added). *Id.*

We emphasize that the *self-referential database table* considered by the *Enfish* court was found to be a specific type of data structure that was designed to *improve* the way a computer stores and retrieves data in memory. *Id.* at 1339. Because the *Enfish* court found the claimed *self-referential database table improved* the way the computer stored and retrieved data, the court concluded the *Enfish* claims were not directed to an abstract idea, and thus, ended the analysis at *Alice* step one. *Id.* at 1336. Here, Appellant has not shown that any of the features of the claims before us on appeal improve the way the recited generic computer system and the related components *store and retrieve* data in the first and second databases, in a manner analogous to that found by the court in *Enfish*. *See also* Reply Br. 5–6.

Furthermore, the remaining elements recited in claim 21, as well as other independent claims, do not integrate these abstract ideas into a practical application. The written description discloses that the recited computer system, processor, and memory including the software code encompass generic components such as a general-purpose processor, memory and software modules. *See, e.g.,* Spec. ¶¶ 50–55, Fig. 3 (Providing no specific definition for the term “computer system” other than listing different types of a generic computer processor including processing instructions that are stored in a generic memory or storage device). Simply adding generic hardware and computer components to perform abstract ideas does not integrate those ideas into a practical application. *See* Revised Guidance, 84 Fed. Reg. at 55 (identifying “merely includ[ing] instructions to

implement an abstract idea on a computer” as an example of when an abstract idea has not been integrated into a practical application).

Even assuming, without deciding, that the claimed invention can automatically determine the values for the intermediate and target properties of the material more efficiently than a human, the increased efficiency comes from the capabilities of the generic computer components-not the recited process itself including the first and second databases. *See FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1095 (Fed. Cir. 2016) (“[T]he fact that the required calculations could be performed more efficiently via a computer does not materially alter the patent eligibility of the claimed subject matter.” (quoting *Bancorp Servs., L.L.C. v. Sun Life Assurance Co. of Can. (U.S.)*, 687 F.3d 1266, 1278 (Fed. Cir. 2012))); *see also Intellectual Ventures I LLC v. Erie Indem. Co.*, 711 F. App’x 1012, 1017 (Fed. Cir. 2017) (unpublished) (alteration in original) (citation omitted) (“Though the claims purport to accelerate the process of finding errant files and to reduce error, we have held that speed and accuracy increases stemming from the ordinary capabilities of a general-purpose computer ‘do[ ] not materially alter the patent eligibility of the claimed subject matter.’”). Like the claims in *Fair Warning*, the focus of claim 21 is not on an improvement in computer systems or databases as tools, but on certain independently abstract ideas that use generic computing components to lookup values in a database as tools. *See FairWarning*, 839 F.3d at 1095.

Thus, the claims do not integrate the judicial exception into a practical application. The claims 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), (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).

*Inventive Concept*

Because we determine claim 21 is “directed to” an abstract idea, we consider whether claim 21 recites an “inventive concept.” Under the Revised Guidance, if a claim: ( 1) recites a judicial exception, and (2) does not integrate that exception into a practical application, we then look to whether the claim adds a specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field (*see* MPEP § 2106.05(d)); or, simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception. *See* Revised Guidance, 84 Fed. Reg. at 56.

The Examiner determined claim 21 does not recite an inventive concept because the additional elements in the claim “are merely instructions to implement the abstract idea on a computer and require no more than a generic computer to perform generic computer functions that are well-understood, routine and conventional activities previously known to the industry.” *See* Final Act. 3.

Appellant argues that the inventive steps includes “the specific pre-configuration of the computer system with two specific databases, and the use by the computer system of such databases to quickly perform preliminary evaluation of a specified candidate material for use in future

integrated circuit technology,” which “is not merely in the use of a computer to perform generic functions.” Appeal Br. 15 (citing *Bascom Global Internet Services., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016)); *see also* Reply Br. 7. Appellant specifically argues the use of two databases and “the division of responsibility between two databases” constitute an unconventional use of databases. Appeal Br. 16.

We are unpersuaded. First, Appellant’s claims can be distinguished from patent-eligible claims such as those in *Bascom*, where the system claims were directed to a “content filtering system for filtering content retrieved from an Internet computer network,” which the court held were directed to an abstract idea. *Bascom*, 827 F.3d at 1348–49. The court further held the claims included an inventive concept in the ordered combination of system components, including a local client computer and a remote ISP server connected to the client computer and Internet computer network providing for “the installation of a filtering tool at a specific location, remote from the end-users, with customizable filtering features specific to each end user.” *Id.* at 1350. Appellant has failed to establish that claim 21 includes a similar or analogous arrangement or “ordered combination” of components, and, instead, make only the conclusory statement that the recited first and second databases used to determine intermediate property values or target property values are “non-traditional” and “improve[] the functioning of the computer.” *See* Appeal Br. 14–17.

Second, the additional elements recited in the claim include “providing a first database,” “providing a second database,” and “a computer system” that determines and screens “a value or values of the intermediate property or properties” and “the value of the target property for the

particular candidate material.” The claim recites these elements at a high level of generality, and the written description provides no details about calculating the values, adding them to the databases, or determining the values to screen a particular candidate material to show there is anything about using the databases that is not routine or conventional, and determining material property values in the databases and comparing them to determine the target property for a particular material is certainly a well-established practice in the integrated circuit fabrication arts. *See, e.g.*, Spec. ¶¶ 24–34 (describing routine ways for determining values based on a look-up in a database containing pre-calculated values), 50–55 (describing generic and conventional computing and storage components for providing databases, determining values, and screening the candidate material). Consequently, we find that the above-identified claim elements constitute no more than what would have been well-understood, routine and conventional to a skilled artisan. *See Berkheimer v. HP Inc.*, 881 F.3d 1360, 1368 (2018).<sup>6</sup>

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<sup>6</sup> A specification demonstrates the well-understood, routine, conventional nature of additional elements when it describes the additional elements as well-understood or routine or conventional (or an equivalent term), as a commercially available product, or in a manner that indicates that the additional elements are sufficiently well-known that the specification does not need to describe the particulars of such additional elements to satisfy 35 U.S.C. § 112(a). Memorandum on *Changes in Examination Procedure Pertaining to Subject Matter Eligibility, Recent Subject Matter Eligibility Decision (Berkheimer v. HP, Inc.)* (Apr. 19, 2018) available at: <https://www.uspto.gov/sites/default/files/documents/memo-berkheimer-20180419.PDF>

*Conclusion*

For at least the above reasons, we agree with the Examiner that claim 21 is “directed to” an abstract idea and does not recite an “inventive concept.” Accordingly, we sustain the Examiner’s rejection of claim 21 and the remaining claims which fail to include additional elements that add significantly more to the abstract idea under 35 U.S.C. § 101.

DECISION

We affirm the Examiner’s rejection of claims 21–42 under 35 U.S.C. § 101.

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)(iv).

In summary:

<b>Claims Rejected</b>	<b>Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
21–42	§ 101	21–42	

AFFIRMED