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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JOHN CASEY LAIRD, DAVID PAUL ZECKSER,
WILLIAM BRANDON RIDENOUR, CRAIG SMITH, and
ANDREW TILEY

Appeal 2018-009127
Application 14/942,829¹
Technology Center 3600

Before DONALD E. ADAMS, RICHARD M. LEBOVITZ, and
RACHEL H. TOWNSEND, *Administrative Patent Judges*.

TOWNSEND, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 involving claims to a method for facilitating a communication session between a consumer and a service provider, which have been rejected as being directed to patent ineligible subject matter. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

STATEMENT OF THE CASE

Appellant's Specification states:

¹ 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 HomeAdvisor, Inc. (Appeal Br. 2.)

There are many service providers that are willing to provide their services to consumers. Likewise, there are many consumers that are looking for various services and/or products provided by various service providers. However, it may be difficult for consumers to identify reliable and trustworthy service providers. Likewise, it may be difficult for service providers to find and contact consumers that have jobs and projects that the service providers are qualified for and are interested in pursuing.

(Spec. ¶ 2.) The claims on appeal “relate generally to facilitating communication sessions between a consumer and a service provider.”

(Spec. ¶ 1.)

Claims 1–15, 17, 18, and 20–22 are on appeal. Claim 1 is representative and reads as follows:

1. A method for facilitating a communication session between a consumer and a service provider, comprising:
 - receiving, at a remote computing device, an inquiry about service from a consumer, the inquiry originating from a computing device connected to a network;
 - obtaining from the inquiry, one or more items of information about the service;
 - determining, at the remote computing device and based on the one or more items of information, a plurality of service providers that can perform the service;
 - determining, by the remote computing device using a scoring algorithm, a subset of service providers from the plurality of service providers, wherein the scoring algorithm is used to determine a score associated with each service provider in the plurality of service providers and wherein the score is based, at least in part, on historical acceptance rates of each service provider in the plurality of service providers and on a number of times each service provider of the plurality of services providers has instantly connected with past consumers;
 - ranking, by the remote computing device, the subset of service providers using the score determined by the scoring algorithm;

identifying, by the remote computing device, a service provider from the subset of service providers based, at least in part, on the ranking;

automatically determining, by the remote computing device, whether the service provider is currently available for a communication session;

providing, by the remote computing device, a notification that the service provider has been identified and is currently available for the communication session, the notification being transmitted to the computing device and including a selectable element that enables the consumer to be instantly connected with the identified service provider via a communication session; and

automatically initiating the communication session between the identified service provider and the consumer when the selectable element is selected.

(Appeal Br. 26.)

The following ground of rejection by the Examiner is before us on review:

Claims 1–15, 17, 18, and 20–22 under 35 U.S.C. § 101 as being directed to patent ineligible subject matter.

DISCUSSION

The Examiner finds that the claims are directed to a judicial exception because they

describe the abstract idea of using a third-party intermediary to help facilitate a transaction between two parties (i.e., a consumer and a service provider), which is similar to the concept of intermediated settlement (using a third-party intermediary) as discussed by the Court in *Alice*, which is a fundamental economic practice long prevalent in our system of commerce. See *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S., 134 S. Ct. 2347 (2014).

(Final Action 6.) The Examiner further finds that

the claims do not include additional elements or a combination of elements that amount to *significantly* more than the judicial exception because the additional elements are merely directed to instructions to implement the idea on a generic computer and/or computer implemented functions that are well-understood, routine, and conventional activities previously known to the art.

(*Id.* at 7.) The Examiner notes that the additional limitations include

remote computing device (for implementing several claim steps), *a computing device connected to a network* (from which the consumer inquiry originated); and *including a selectable element that enables the consumer to be instantly connected with the identified service provider* (for initiating the communication session *when the selectable element is selected*).

(*Id.*) The Examiner indicates that the limitations describing the computer-implementation are recited at a high level of generality. *Id.* The Examiner further explains that the determining step, ranking step, identifying step, and including a selectable element

describe well-understood, routine, and conventional activities in the art, and even when implemented by a computer, involve nothing more than automating mental tasks, which has been noted by courts as well-understood, routine, and conventional.

(*Id.* at 8.) The Examiner notes that “inclusion of *a selectable element that enables the consumer to be instantly connected with the identified service provider . . .* encompasses routine and conventional prior art activity” and cites a number of references in support of that position. (*Id.*)

The Examiner further finds that

when taken as an ordered combination, the ordered combination adds nothing that is not already present as when the elements are taken individually. There is no indication that the combination of elements improves the functioning of a computer or improves any other technology. Their collective

functions merely provide conventional computer implementation.

(*Id.* at 9.) Thus, the Examiner concludes that the “additional claim elements do not provide meaningful limitations to transform the abstract idea into a patent eligible application of the abstract idea such that the claims amount to significantly more than the abstract idea itself.” (*Id.*)

We agree with the Examiner’s conclusion that the claims are directed to patent ineligible subject matter for the reasons discussed below.

ANALYSIS

35 U.S.C. § 101 defines patent eligible subject matter. The Supreme Court has carved out exceptions to what would otherwise appear to be within the literal scope of § 101. *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014). One of these exceptions are claims “directed to” an abstract idea. *Id.* at 217. This appeal involves the abstract idea exception to patent eligibility under section 101.

The Supreme Court has established a 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.” *Id.* “First, we determine whether the claims at issue are directed to” a patent-ineligible concept. *Id.* If so, “we consider the elements of each claim both individually and ‘as an ordered combination’ to determine whether the additional elements ‘transform the nature of the claim’ into a patent-eligible application.” *Id.* (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 78–79 (2012)).

The United States Patent and Trademark Office (PTO) issued the *2019 Revised Patent Subject Matter Eligibility Guidance* (“Guidance”), indicating how the PTO would analyze patent eligibility under the Supreme

Court’s two-step framework. 84 Fed. Reg. 50–57 (January 7, 2019).

Applying the Guidance, we agree with the Examiner that the pending claims are directed to patent ineligible subject matter.

STEP 2A, Prong One:

Under the Guidance, in determining what concept a claim is “directed to” in step one of the Supreme Court’s two-step framework, we first look to whether the claim recites any judicial exceptions, such as a mathematical concept (including mathematical relationships, mathematical formulas or equations, mathematical calculations), methods of organizing human activity (such as advertising, marketing or sales activities or behaviors, and business relations, as well as managing interactions between people), and/or a mental process (concepts performed in the mind, including an observation, evaluation, judgment or opinion) Guidance, 84 Fed. Reg. at 52, 54 (Step 2A, Prong One). Concepts performed in the mind include performance in the mind but for the recitation of generic computer components. *Id.* at 52 n.14. These types of judicial exceptions are deemed abstract ideas. *Id.* at 51–52.

Claim 1 recites steps that detail a process that identifies service providers based on a received request from a consumer and after determining through a scoring algorithm² that the service providers meet particular criteria from a list of such providers, ranking those providers, and automatically determining whether a ranked providers are available for communication with the consumer. In particular, claim 1 recites at least the

² As the Specification explains, the scoring algorithm is a probability calculation. (See spec. ¶¶ 34–35, 53–55.)

following steps: “determining . . . a subset of service providers from the plurality of service providers” based on a score that considers “historical acceptance rates of each service provider in the plurality of service providers and on a number of times each service provider of the plurality of services providers has instantly connected with past consumers,” “ranking . . . the subset of service providers using the score”, “identifying . . . a service provider from the subset of service providers based, at least in part, on the ranking”, and “automatically determining . . . whether the service provider is currently available for a communication session.” We find that these steps each individually recite mental processes because but for the recitation of the use of a generic “computing device,” they cover steps that can be performed in the mind.³

Finally, while we agree with Appellant that the claim is not directed to a fundamental economic practice like the concepts in *Alice*, *Bilski*, or *Benson* (Appeal Br. 11–13; Reply Br. 2–3), we find that the steps of claim 1, collectively as an ordered combination, recite a method of organizing human activity, e.g., managing interactions between a potential customer and potential service provider. We agree with the Examiner that claim 1 describes the involvement of a third-party intermediary—a computer—to facilitate a transaction between two parties of a transaction. (Final Action 2, 7.) Appellant does not disagree on that point stating:

³ Claim 5, which Appellant mentions separately in the Appeal Brief, but does not argue independently from claim 1 (*see, e.g.*, Appeal Br. 12, 14–15), likewise recites identifying a service provider, namely “another service provider in the subset . . . when the communication session between the identified service provider and the consumer cannot be established.” Like the identifying step in claim 1, this step recites a mental process.

[T]he claims of the present application describe the technical details of how to facilitate a communication session between a consumer and a service provider. More specifically, the independent claims are directed to receiving a request from a consumer to find a service provider that has the skill to assist with a particular project. Once the request is received, a scoring algorithm is used to select a service provider that: 1) has the required skill set to complete the requested service, 2) has a determined historical acceptance rate of accepting projects, and 3) has, in the past, been available to discuss the particular project with a consumer at the time the consumer has submitted the original request.

Once the service provider has been identified and selected, the computing device generates a notification and a selectable element that enables a communication session to be instantly initiated between the computing device of the service provider and the computing device of the consumer.

(Appeal Br. at 11–12.)

The Examiner contends that these features “for establishing a connection/communication session between a consumer and service provider [are] performed for the very purpose of facilitating a transaction between the consumer and service provider.” (Final Action 2–3.) As the Examiner notes, the scoring algorithm and the elements “from which scoring is derived (i.e., historical acceptance rate, number of times service provider has connected with past consumers)” “are directed to business or customer-service related elements.” (Ans. 4–5.) We agree and conclude that the claim recites a number of abstract ideas, including mental processes and a method of organizing human activity—even though we agree with Appellant that the activity is not a fundamental economic practice (Appeal Br. 12–13).

STEP 2A, Prong Two:

Having made the determination that claim 1 recites abstract ideas, under the Guidance, we next examine whether there are additional elements

beyond the determining, ranking, and identifying, and the organizing of a connection/communication session between a consumer and service provider that integrate those judicial exceptions into a practical application. Under the Guidance, this is referred to as the “Prong Two” inquiry under “Step 2A.” Guidance, 84 Fed. Reg. at 54–55. That is, under the Prong Two analysis we look to whether the claim as a whole “appl[ies], rel[ies] on, or use[s] the judicial exception in a manner that imposes a meaningful limit on the judicial exception.” *Id.*

One of the “examples in which a judicial exception has not been integrated into a practical application” is when “[a]n additional element . . . merely includes instructions to implement an abstract idea on a computer, or merely uses a computer as a tool to perform an abstract idea.” *Id.* at 55. *See also buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1354 (Fed. Cir. 2015) (stating that “[t]he Court in *Alice* made clear that a claim directed to an abstract idea does not move into section 101 eligibility territory by ‘merely requir[ing] generic computer implementation’”) (alteration in original).

We find that claim 1 does not integrate the recited abstract ideas into a practical application.⁴ The claim limitations that are “in addition to” the recited abstractions are the collection of data to be used in the determination, i.e., receiving an inquiry about service, obtaining more granular information about the service from the inquiry, and providing a notification with a selectable element that when selected will automatically initiate a communication session between consumer and service provider.

⁴ Our analysis applies equally to claim 5, which Appellant argues together with claim 1.

The claim’s recitation of receiving certain information and refining the granularity of that information (*see* Spec. ¶ 3 (“The inquiry [received from a consumer] is parsed to determine one or more items of information about the particular product or service”)) is mere data-gathering and recites the type of extra-solution activity (i.e., in addition to the judicial exception) the courts have determined insufficient to transform judicially excepted subject matter into a patent-eligible application. *See* MPEP § 2106.05(g); Guidance at 55, 55 n.31; *see Bilski v. Kappos*, 561 U.S. 593, 612 (holding the use of well-known techniques to establish inputs to the abstract idea as extra-solution activity that fails to make the underlying concept patent eligible); *SAP Am., Inc. v. Invest Pic, LLC*, 898 F.3d 1161, 1168 (Fed. Cir. 2018) (“[E]ven if a process of collecting and analyzing information is ‘limited to particular content’ or a particular ‘source,’ that limitation does not make the collection and analysis other than abstract.”); *Elec. Pwr. Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353–54 (Fed. Cir. 2016) (holding that steps of collecting information, even when limited to particular content (which does not change its character as information), do not make claims patent eligible).

As the Examiner noted, “the limitations describing computer-implementation of the claim steps/functions (e.g., *remote computing device, computing device connected to a network*) are recited at a high level of generality.” (Final Action 7–8.) Moreover, we agree with the Examiner that Appellant’s “Specification indicates the computer(s) relied on to implement the invention may be virtually any conventional computing device (e.g., general purpose computer), as suggested in at least paragraphs [0028] and [0107] of the Specification.” (*Id.* at 8 (alteration original).) The computing

device by which the remote computing device receives the inquiry from a consumer and to which the remote computing device delivers the notification with a selectable element is likewise any conventional computing device. (*See, e.g.*, Spec. ¶¶ 21, 37, 44, 45, 49, 50.) Because the claim merely implements the claimed method on general purpose computers, performing normal computer functions in analyzing data, providing output notifications and initiating communication sessions based on a selection input, the claimed method does not reflect “an improvement in the functioning of a computer.” Guidance at 55. The remote computing device and computing device connected to a network are merely invoked as tools to perform the claimed method.

The method does not concern an improvement to a technology because, while the method is executed on a computer, the purported improvement is not on any particular technology but on improvement to the efficiency of service provider referral systems in which the improvement is in data analysis and the consequent steps to facilitate communication between consumer and available service provider, which themselves are abstract ideas. We are not convinced that the fact that the customer is provided with a selectable element and that the communication can be automatically initiated when selected is an improvement to computer technology. While this may be a business improvement, there is no assertion that claim 1 requires any specific improvement to graphical user interfaces or otherwise that provides the selectable element for the customer or in the automation to connect the service provider with the consumer when the selectable element is selected. Rather, Appellant only contends that a specific, structured graphical user interface is required that provides a

selectable element. (Appeal Br. 14.) As will be discussed below, such an element is not novel.

The claim limitations as a whole are directed at facilitating a communication session between a consumer and a service provider by automating a previously performed manual process in which a consumer looked up potential service providers, talked with friends to find out the ability of those service providers or otherwise researched the capability of the collection of potential service providers identified in its research and contacted the service providers one-by-one to determine ability to perform task. Appellant explains that: “As discussed in the present specification, it is difficult for consumers to identify reliable and trustworthy service providers let alone find service providers that are qualified and immediately available for a communication session.” (Reply Br. at 5.) This identified problem does not address a technological problem but rather is a business concern, and the solution does not improve a technological system. “[R]elying on a computer to perform routine tasks more quickly or more accurately is insufficient to render a claim patent eligible.” *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015)). The method merely implements a purported improvement to organizing human behavior on general purpose computers.

Appellant does not provide any specific showing, either in the claim language or the Specification, of an improvement in the computer components, or that these components are being used in a unique or unconventional manner different from their ordinary purpose. Indeed, the Specification makes it clear that the steps involve general purpose computer operations. (See, e.g., Spec. ¶¶ 21, 29–52 (explaining that information

provided to a computer by a consumer through a computer (be it a tablet, smartphone or other computer device) is processed by the computer where databases that store information are accessed analyzed and information is transmitted.) In other words, the claim is not focused on an improvement to computers or software as tools, but rather uses computers and software to execute the judicial exception. Indeed, Appellant notes the improvement is simply one of improving “the efficiency of referral systems in which a consumer may have had to attempt to contact multiple different service providers before even speaking to a service provider let alone finding a suitable match.” (Appeal Br. 15.) Such automation of manual processes does not reflect “an improvement to other technology or technical field.” Guidance at 55; *see also Credit Acceptance Corp. v. Westlake Servs.*, 859 F.3d 1044, 1055 (Fed. Cir. 2017) (indicating that our reviewing court has “made clear that mere automation of manual processes using generic computers does not constitute a patentable improvement in computer technology”).

The claim does not require a specialized machine or manufacture, and does not transform an article to a different state. Guidance at 55; *BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1348 (Fed. Cir. 2016) (“An abstract idea on ‘an Internet computer network’ or on a generic computer is still an abstract idea”). The claimed method does not improve the speed or operation efficiency of the computer or the accuracy of computer operations, even if it may improve the efficiency of connecting a qualified service provided with a consumer in need of service (Appeal Br. 15). The claim, as a whole, describes how to generally apply or execute the concept as a “computer-implemented method.” In other words, the claim

merely links the recited abstract idea generally to a computer environment, and thus does no more than represent a drafting effort to monopolize the abstract idea in a computer implementation. Guidance at 55. As such, we conclude that the many identified judicial exceptions of claim 1 are not integrated into a practical application. Thus, we conclude that the claim is directed to an abstract idea.

Appellant's argument that the claim is similar to those in the non-precedential decision *Trading Technologies International, Inc. v. CQG, Inc.*, 675 F. App'x 1001 (Fed. Cir. 2017) (Appeal Br. 13; Reply Br. 7) is not persuasive. In *Trading Technologies* the patented claims recited a method and system for displaying market information on a graphical user interface ("GUI"). *Trading Techs. Int'l, Inc. v. CQG, Inc.*, No. 05-cv-4811, 2015 WL 774655 *4 (N.D. Ill. Feb. 24, 2015). The district court found that with prior art GUIs, the best bid and best ask prices changed based on updates received from the market; therefore, there was a risk with these GUIs that a trader would miss her intended price as a result of prices changing from under her pointer at the time she clicked on the price cell on the GUI. The patents-in-suit provided a system and method whereby traders could place orders at a particular, identified price level, not necessarily the highest bid or the lowest ask price by keeping the prices static in position, and allowing the quantities at each price to change. *Id.* The Federal Circuit affirmed the district court's holding that the patented claims were not directed to an abstract idea because the district court found, and the Federal Circuit agreed, that the challenged patents did not simply claim displaying information on a graphical user interface; instead, the claims required "a specific, structured graphical user interface paired with a prescribed functionality directly

related to the graphical user interface's structure that is addressed to and resolves a specifically identified problem in the prior state of the art.” *Trading Technologies International, Inc. v. CQG, Inc.*, 675 F. App'x at 1004. No graphical user interface improvement is asserted to be involved here, just that a selectable element is provided. (Appeal Br. 14.) But as discussed below, the provision of such selectable elements on a GUI to immediately connect consumers with an available service provider are known in the art. (*See* Final Action 8, 11 (citing Lurie, US 2003/0126205); Ans. 8.)

We also do not find Appellant's argument that the claim at issue here is “similar to the concepts” in *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299 (Fed. Cir. 2016). (Appeal Br. 14–15; Reply Br. 7–8.) The claimed invention in *McRO* was patent-eligible because it was directed to a “technological improvement over the existing, manual 3-D animation techniques,” *McRO*, 837 F.3d at 1316. It was not just automating a process that had previously been done manually, but an improvement in “how the physical display operated (to produce better quality images).” *SAP Am., Inc. v. Investpic, LLC*, 898 F.3d 1161, 1167 (Fed. Cir. 2018) (contrasting the claims at issue in *SAP* with those in *McRO*); *see also Solutran, Inc. v. Elavon, Inc.*, 931 F.3d 1161, 1167 (Fed. Cir. 2019) (noting that in *McRO*, the claims were “‘limited to rules with specific characteristics’ to create a technical effect.”). Here, on the other hand, there is no such technological improvement or use of specific rules that achieve a technical effect. As discussed above, the claim invokes generic processes and computers and is merely a generic computer implementation of managing interactions between people.

We are also unpersuaded by Appellant’s argument that because the claims “cannot possibly prevent or preempt all uses” of automatically establishing a communication session, they cannot be considered abstract (Appeal Br. 16). “[T]he absence of complete preemption does not demonstrate patent eligibility.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015). “Where a patent’s claims are deemed only to disclose patent ineligible subject matter under the *Mayo* framework, as they are in this case, 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.”).

STEP 2B:

We next turn to Step 2B to evaluate whether claim 1 provides an inventive concept. Guidance at 54. Neither a finding of novelty nor a non-obviousness determination automatically leads to the conclusion that the claimed subject matter is patent-eligible. 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*, 573 U.S. at 217–18 (citation omitted). “Groundbreaking, innovative, or even brilliant discovery does not by itself satisfy the § 101 inquiry.” *Ass’n 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 § 101 categories of possibly patentable subject matter.”).

Step 2B requires that we look to whether the claim “adds a specific limitation” beyond the judicial exception that is not “well-understood, routine, conventional activity in the field.” Guidance at 56. Data gathering for use in mathematical calculations does not suffice to render claims statutory subject matter. *See, e.g., In re Richman*, 563 F.2d 1026, 1030 (1977) (“[N]otwithstanding that the antecedent steps are novel and unobvious, they merely determine values for the variables used in the mathematical formulae used in making the calculations. [They] do not suffice to render the claimed methods, considered as a whole, statutory subject matter.”). Furthermore, using generic computer components to perform abstract ideas does not provide the necessary inventive concept. *See Alice*, 573 U.S. at 223 (“[T]he mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention.”); *see also SAP*, 898 F.3d at 1163, 1170 (finding that the invocation of such computers for use in carrying out improved mathematical calculations amounts to recitation of what is well-understood, routine, and conventional). Also, “steps that do nothing more than spell out what it means to ‘apply it on computer’ cannot confer eligibility.” *Intellectual Ventures I LLC v. Capital One Bank*, 792 F.3d 1363, 1370 (Fed. Cir. 2015).

We do not find persuasive Appellant’s argument that the “claim elements cause the various components of a computing device to operate in an unconventional manner” because claim 1

requires the generation and display of a notification that indicates that a service provider has been identified and is currently available for a communication session. The notification is generated based on results of a scoring algorithm. The notification also includes a selectable element that enables the consumer to be instantly connected with the identified service provider via a communication session.

(Appeal Br. 21.) The foregoing does not describe unconventional operation of the components of a computing device. Using a computer to retrieve, select, and apply decision criteria to data and modify the data as a result amounts to electronic data query and retrieval—one of the most basic functions of a computer. There is nothing unconventional about providing a user of a computer with a notification of results based on a user query. Moreover, that the notification includes a selectable element that enables instant connection regarding the retrieved results was also not unconventional at the time of Appellant’s application date, e.g., November 16, 2015, as the Examiner explained (Final Action 8, 10–12, Ans. 6, 7–8). For example, the Examiner explains, and Appellant does not dispute, that Lurie, US 2003/0126205,

discloses scheduling live advice with a selected service provider, including determining which service providers in the plurality of service providers are currently available to be instantly connected to the consumer (paragraphs 115-119 and Fig. 3: e.g., Fig. 3 showing a listing of service providers and their respective availability for a communication session, i.e., available for Live Advice, Away from phone, On the Phone, etc.); and an opportunity for each currently available service

provider to be instantly connected to the consumer, via the communication session (Fig. 3 and paragraphs 15 and 115-119). (Final Action 11; Ans. 8.) The fact that the selectable element and notification are only provided to the consumer “when it is determined that ‘the service provider *has been identified and is currently available for the communication session*’” (Reply Br. 11) does not change the fact that the provision of a selectable element that enables communication once selected is not unconventional. When the selectable element is provided to the customer, i.e., when it is “automatically determin[ed], by the remote computing device, whether the service provider is currently available for a communication session,” simply goes to the use of the algorithm and data analysis to identify providers that are currently available. (*See, e.g.*, Spec. ¶¶ 74–76 (describing the communication module having an availability module that has access to calendaring applications associate with or used by the various service providers).) That this data processing might be a novel way for the computing device to analyze the data does not change the fact that the computing device is operating in a conventional manner, i.e., data processor.⁵

Moreover, the Examiner does not dispute that the claims that require using the specifically recited scoring algorithm to determine a subset of service providers for which a selectable element that enables communication with a particular provider is novel. (Final Action 10.) Novelty of the abstract idea of the algorithm used to identify service providers to the

⁵ For these reasons, we do not agree with Appellant that the Examiner “has failed to satisfy the requirements set forth in *Berkheimer* in showing that the elements of the claim[] are well-understood, routine and conventional” (Reply Br. 11; Appeal Br. 25).

consumer and managing the interactions between a potential customer and potential service provider based on availability of the service provider, does not render the claims to the abstract idea patent-eligible subject matter. *See Mayo*, 566 U.S. at 90; *Diehr*, 450 U.S. at 188–89 (“[t]he ‘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 § 101 categories of possibly patentable subject matter.”).⁶

We also do not find persuasive Appellant’s argument that claim 1 is like those claims found patent-eligible in *DDR Holdings*, *AmDocs* and *Bascom* (Appeal Br. 19–22; Reply Br. 9).

⁶ Appellant argues that the facts of *Ex parte Blaho*, Appeal No. 2016-007954, 2017 WL 4418917, (PTAB 2017) and this case are substantially similar such that a finding of patent eligibility is warranted. (Appeal Br. 15; Reply Br. 8–9.) We disagree. In *Blaho*, the question was whether a claim directed to network of gaming devices recited to use specific steps involving rendering and displaying images over the network to various users/gamers can be considered management of human activity and thus renders the claims directed to a judicial exception. 2017 WL 4418917 *2. The Board determined that “the system and method claimed herein deals with processing and displaying images in a specific manner among the three devices over a network” and that the claims are “directed to ‘execut[ing] a game on one device which is remotely viewed on another’ . . . not merely managing relationships or transactions between people as in *Dealertrack*(processing loan information), *Bancorp* (managing an insurance policy), or *Planet Bingo* (managing a game of bingo while allowing a player to repeatedly play the same sets of numbers in multiple sessions). *Id.* Claim 1 at issue here does not concern a similar method of coordinating display between multiply networked devices, but rather, concerns managing the interaction between consumer and service provider through networked devices, which is identified in the Guidance as an abstract idea, Guidance at 52.

In *DDR Holdings, LLC v. Hotels.com, L.P.* 773 F.3d 1245 (Fed. Cir. 2014), the Court evaluated the eligibility of claims “address[ing] the problem of retaining website visitors that, if adhering to the routine, conventional functioning of Internet hyperlink protocol, would be instantly transported away from a host’s website after ‘clicking’ on an advertisement and activating a hyperlink.” *Id.* at 1257. The claims addressed a problem that was rooted in computer technology. The Court found that the claims were patent eligible because they transformed the manner in which a hyperlink typically functions to resolve a problem that had no “pre-Internet analog.” *Id.* at 1258. Claim 1 at issue here does not address a problem rooted in computer technology, much less solve that problem. Indeed, the Specification describes only the use of generic computer equipment performing routine, conventional, and generic tasks. The generation of a notification and a selectable element is not an internet problem that is solved. Rather, the solution/improvement is in the identification of a service provider that has both a particular score as identified by the algorithm and that is available for immediate communication. That improvement is better data analysis not the solution to an internet-centric problem whose solution is rooted in computer technology.

For this same reason, we do not find persuasive Appellant’s argument that claim 1 is patent eligible for similar reasons that claim 2 of Example 21 of the USPTO’s 2015 Update on Subject Matter Eligibility was deemed patent eligible (Appeal Br. 22–23; Reply Br. 9–10). Claim 1 of Example 21 was considered ineligible and claim 2, which addressed “the Internet-centric challenge of alerting a subscriber with time sensitive information when the subscriber’s computer is offline” by a transmission of an alert to an

application that “cause[d] the alert to display and enable[d] the connection of the remote subscriber computer to the data source over the Internet when the remote subscriber computer comes online,” was considered eligible. *See* July 2015 Update Appendix 4. Thus, claim 2 was similar to *DDR Holdings* in solving an Internet-centric problem with a solution necessarily rooted in computer technology. *Id.*

In *Amdocs Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288 (Fed. Cir. 2016), the unconventional arrangement of components (network devices, gatherers, ISMs, a central event manager, a central database, a user interface server, and terminals or clients) creating a distributed architecture provided a technological solution that “improved the performance of the system itself.” *Id.* at 1300–1302. Similarly, in *Bascom*, the Federal Circuit held “[t]he inventive concept described and claimed in the ‘606 patent is the installation of a filtering tool at a specific location, remote from end-users, with customizable filtering features specific to each end user.” *Bascom*, 827 F.3d at 1350. In determining that this feature was patent eligible, the Federal Circuit explained that the remote location of a filtering tool having customizable user-specific filtering features provided the filtering tool both the benefits of a filter on a local computer and the benefits of a filter on the ISP server, and was a technical improvement over prior art ways of filtering content. *Id.* at 1350–51. Claim 1 at issue here does not recite an unconventional arrangement of computer components, as discussed above.

We are also not persuaded by Appellant’s argument that claim 1 “can . . . be likened to those in *Core Wireless Licensing S.A.R.L v. LG Electronics*[], 880 F.3d 1356 (Fed. Cir. 2019),] that were also deemed patent eligible.” (Appeal Br. 24; Reply Br. 10.) In *Core Wireless*, the claimed

invention was “to an improved interface for computing devices” and the claim included limitations requiring a “specific manner of displaying a limited set of information to the user, rather than using conventional user interface methods to display a generic index on a computer.” 880 F.3d at 1362–63. The prior art taught that small-screen electronic interfaces required users to scroll through and switch views to find desired data and functions. 880 F.3d at 1363. The Court stated that “[a]lthough the generic idea of summarizing information certainly existed prior to the invention, [Core Wireless’] claims are directed to a particular manner of summarizing and presenting information in electronic devices,” which results in “an improved user interface for electronic devices,” and “an improvement in the functioning of computers,” not to an abstract idea. *Id.* at 1363. Claim 1 at issue here does not address an improved GUI.

Under Step 2B, we are not persuaded that the Examiner erred in determining that the limitations of claim 1 do not transform the claim into significantly more than the abstract idea. Claim 1 amounts to nothing significantly more than instructions to apply the abstract ideas of a certain method of organizing human activity using unspecified, generic computer components. Under our precedents, that is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 573 U.S. at 225-26.

Claims 2–4, 6–11, 13–15, 17, 20, and 22 have not been argued separately and therefore fall with claim 1. 37 C.F.R. § 41.37(c)(1)(iv).

Appellant asserts that independent claims 12 and 18, and dependent claim 21, contain similar features to claim 1 and contends that the same arguments made with respect to claim 1 are applicable to those claims. (Appeal Br. 16–17.) Thus, these claims are not separately argued. *See e.g.*,

Appeal 2018-009127
Application 14/942,829

In re Lovin, 652 F.3d 1349, 1357 (Fed. Cir. 2011). For the reasons discussed, therefore, claims 12 and 18 fall with claim 1. 37 C.F.R. § 41.37(c)(1)(iv).

SUMMARY

In summary:

Claims Rejected	Basis	Affirmed	Reversed
1–15, 17, 18, and 20–22	§ 101	1–15, 17, 18, and 20–22	
Overall Outcome		1–15, 17, 18, and 20–22	

TIME PERIOD FOR RESPONSE

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

AFFIRMED