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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* ING-MARIE JONSSON and MARIA ZOLOTOVA

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Appeal 2018-009148  
Application 14/586,661<sup>1</sup>  
Technology Center 3600

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Before ROBERT E. NAPPI, JOHN A. EVANS, and  
JASON J. CHUNG, *Administrative Patent Judges*.

CHUNG, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) of the Final Rejection of claims 1, 6, 7, 12, 13, and 18.<sup>2</sup> We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

INVENTION

The invention relates to lead processing in a sales pipeline within a customer relationship management application. Spec. ¶ 2. Claim 1 is illustrative of the invention and is reproduced below:

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<sup>1</sup> According to Appellants, SugarCRM, Inc. is the real party in interest. App. Br. 2.

<sup>2</sup> Claims 2–5, 8–11, and 14–17 are cancelled. App. Br. 20, 22, 24.

1. In a customer relationship management (CRM) system, a lead management life flow method comprising:

*storing a multiplicity of lead records in a database coupled to the CRM system, each lead record comprising an identity of a lead, a telephone number for the lead, and a counter indicating a number of attempts to contact the lead;*

*assigning each lead record to one or more of a multiplicity of lead development representatives registered with the CRM system;*

*storing different scripts in the database and dynamically assigning each lead of a corresponding lead record to one or more of the scripts;*

*periodically tracking a number of attempts by the lead development representatives to contact each lead and incrementing the counter for each lead;*

*in response to a failed attempt to contact the lead by an assigned one of the lead development representatives comparing in the CRM system the counter to a pre-determined value and, responsive to a determination that too many attempts to contact the lead have transpired resulting in failure based upon the comparison of the counter to the value, re-classifying the lead in the database as a dead prospect, but in response to a successful attempt to contact a lead by an assigned one of the lead development representatives, storing an indication of a rating applied by the assigned one of the lead development representatives; and,*

*determining for each rating, a number of successful attempts to contact corresponding ones of the leads assigned the rating and generating a visualization in a display of the CRM system showing the number of successful attempts for each indication of rating and one or more of the scripts utilized in successfully attempting to contact the leads assigned to each rating.*

App. Br. 19–20 (Claims Appendix) (emphases added).

## REJECTION AT ISSUE

Claims 1, 6, 7, 12, 13, and 18 stand rejected under 35 U.S.C. § 101 as being directed to patent ineligible subject matter. Final Act. 4–6.

### ANALYSIS

#### A. *Legal Principles*

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: “[I]aws of nature, natural phenomena, and abstract ideas” are not patentable. *E.g.*, *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014).

In determining whether a claim falls within an excluded category, we are guided by the 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 182 n.7 (quoting *Corning v. Burden*, 56 U.S. (15 How.) 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 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 192 (“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 (quotation marks omitted). “A claim that recites an abstract idea must include ‘additional features’ to

ensure ‘that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].’” *Id.* (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 § 101. USPTO’s January 7, 2019 Memorandum, *2019 Revised Patent Subject Matter Eligibility Guidance* (“Memorandum”). 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* MPEP § 2106.05(a)–(c), (e)–(h)).

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* Memorandum.

*B. The Examiner’s Conclusions and Appellants’ Arguments*

The Examiner concludes the present claims recite assigning leads to lead development representatives, periodically tracking a number of attempts

by the lead representatives to contact each lead and re-classifying the lead as a dead prospect based on number of failed attempts to contact. Final Act. 2, 4; Ans. 4. The Examiner also determines the present claims do not amount to significantly more than an abstract idea itself because the Examiner determines the abstract idea is implemented on generic components that are well-understood, routine, and conventional previously known to the industry. Final Act. 2–3 (citing Spec. 21, 27, 28); Ans. 4 (citing Spec. ¶¶ 21, 27, 28).

Appellants argue, similar to *McRO, Inc. v. Bandai Namco Games America Inc.*, 837 F.3d 1299, 1308–14 (Fed. Cir. 2016), the present claims recite to an improvement in computer-related technology by automating lead management tracking in a CRM system. App. Br. 10–14 (citing Spec. ¶¶ 6, 7, 18–21). Appellants argue the Examiner fails to provide adequate evidence to support their finding that the abstract idea is implemented on generic components that are well-understood, routine, and conventional previously known to the industry. Reply Br. 3–5.<sup>3</sup> Appellants argue, similar to *BASCOM Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016), the present claims recite a combination of non-conventional and non-generic arrangement of known, conventional elements, which results in an inventive concept. App. Br. 14–18. We

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<sup>3</sup> Although Appellants’ do not proffer this argument in the Appeal Brief, this argument is timely because the *Berkheimer* Memorandum providing guidance was published on April 19, 2018, whereas Appellants’ Brief was filed April 11, 2018. Robert W. Bahr, *Changes in Examination Procedure Pertaining to Subject Matter Eligibility, Recent Subject Matter Eligibility Decision (Berkheimer v. HP, Inc.)*, USPTO 1–5 (2018), <https://www.uspto.gov/sites/default/files/documents/memo-berkheimer-20180419.PDF>.

disagree with Appellants.

*C. Discussion*

*1. Step 2A, Prong 1*

Patent eligibility under 35 U.S.C. § 101 is a question of law that is reviewable *de novo*. *See Dealertrack, Inc. v. Huber*, 674 F.3d 1315, 1333 (Fed. Cir. 2012). We are aware of no controlling authority that requires the Examiner to provide factual evidence under step one of the *Alice* framework to support a determination that a claim is directed to an abstract idea.

The emphasized portions of claim 1<sup>4</sup>, reproduced above (*see supra* at 1–2), recite managing relationships or interactions between people (including following rules or instructions). According to the Memorandum, managing relationships or interactions between people (including following rules or instructions) fall into the category of certain methods of organizing human activity. *See* Memorandum. Moreover, those certain methods of organizing human activity are a type of an abstract idea. *See id.*

Because the present claims recite managing relationships or interactions between people (including following rules or instructions), which fall into the category of certain methods of organizing human activity (i.e., an abstract idea), we proceed to prong 2.

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<sup>4</sup> Claim 1, reproduced above with emphases, recites similar features as independent claims 7 and 13. Appellants do not argue claims 6, 7, 12, 13, and 18 separately with particularity, but assert the § 101 rejection of those claims should be withdrawn for at least the same reasons as argued for independent claim 1. App. Br. 7–18. We, therefore, group claims 1, 6, 7, 12, 13, and 18 together and refer to those claims as the “present claims.”

2. *Step 2A, Prong 2*

The present claims do not integrate the abstract idea into a practical application because they do not impose any meaningful limits on practicing the abstract idea. In particular, we disagree with Appellants' argument that, like *McRO*, the present claims recite improvements to the functioning of a computer or to any other technology or technical field by automating lead management tracking in a CRM system. App. Br. 10–14 (citing Spec. ¶¶ 6, 7, 18–21).

Unlike the claims of *McRO*, the present claims are not directed to rules for lip sync and facial expression animation or an improvement in computer technology or other similar improvements. Instead, claims 2, 11, and 21 are directed to an abstract idea as discussed *supra*, in § I.C.1. or at best, improving an abstract idea—not a technological improvement. The Specification indicates the additional elements (i.e., “database,” “CRM system,” “display,” “host computing system,”<sup>5</sup> “one or more computers,” “memory,” “at least one processor,” and “data store”) recited in the present claims are merely tools used to implement the abstract idea. Spec. ¶¶ 8–10, 20–22, 27, 28.

Additionally, “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) (emphasis added). “[U]nder the *Mayo/Alice* framework, a claim directed to a newly discovered law of nature (or natural phenomenon or abstract idea) cannot rely on the novelty of that discovery for the inventive

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<sup>5</sup> Claim 7 recites “host computing system,” “one or more computers,” “memory,” “at least one processor,” and “data store,” whereas claims 1 and 13 do not.

concept necessary for patent eligibility . . . .” *Genetic Techs. Ltd. v. Merial L.L.C.*, 818 F.3d 1369, 1376 (Fed. Cir. 2016) (citations omitted).

Furthermore, the present claims amount to merely automating the abstract idea discussed *supra* in § C.1. “Automation” or any increase in processing speed in the claimed method (as compared to without using computers) comes from the capabilities of the generic computer components, and not the recited process itself. *See FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1095 (Fed. Cir. 2016) (citing *Bancorp Servs., L.L.C. v. Sun Life Assurance Co.*, 687 F.3d 1266, 1278 (Fed. Cir. 2012) (“[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.”)); *see also Intellectual Ventures I LLC v. Erie Indemnity Co.*, 711 F. App’x 1012, 1017 (Fed. Cir. 2017) (unpublished) (“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.’”).

Appellants do not make any other arguments pertaining to step 2A, prong 2. Because the present claims recite an abstract idea that is not integrated into a practical application, we proceed to Step 2B.

### 3. Step 2B

We agree with the Examiner’s determination that the abstract idea is implemented on generic components that are well-understood, routine, and conventional. Final Act. 2–3 (citing Spec. ¶¶ 21, 27, 28); Ans. 4 (citing Spec. ¶¶ 21, 27, 28). The Specification supports the Examiner’s determination in this regard because it explains that “database,” “CRM

system,” “display,” “host computing system,” “one or more computers,” “memory,” “at least one processor,” and “data store” are generic components. Spec. ¶¶ 8–10, 20–22, 27, 28. Appellants’ Specification indicates these elements were well-understood, routine, and conventional components because it describes them at a high level of generality and in a manner that indicates that they are sufficiently well-known. *Id.*

We disagree with Appellants’ argument that the Examiner fails to provide adequate evidence to support their finding that the abstract idea is implemented on generic components that are well-understood, routine, and conventional previously known to the industry. Reply Br. 3–5. The Examiner provides evidence supporting the determination that the abstract idea is implemented on generic components that are well-understood, routine, and conventional by citing to the Specification. Final Act. 2–3 (citing Spec. ¶¶ 21, 27, 28); Ans. 4 (citing Spec. ¶¶ 21, 27, 28).

We disagree with Appellants’ argument that, similar to *BASCOM*, the present claims recite a combination of non-conventional and non-generic arrangement of known, conventional elements, which results in an inventive concept. App. Br. 14–18. Instead, the present claims are directed to an abstract idea using generic components as discussed *supra*, in §§ C.1. and C.2., or at best, improving an abstract idea—not an inventive concept.

Appellants do not argue claims 6, 7, 12, 13, and 18 separately with particularity, but assert the § 101 rejection of those claims should be withdrawn for at least the same reasons as argued for independent claim 1. App. Br. 7–18. Based on our review of the dependent claims, these claims do not recite any additional features that would transform the abstract idea embodied in claims 1, 7, and 13 into an inventive concept. Accordingly, we

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sustain the Examiner's rejection of: (1) independent claims 1, 7, and 13; and (2) dependent claims 6, 12, and 18 under 35 U.S.C. § 101.

We have only considered those arguments that Appellants actually raised in the Briefs. Arguments Appellants could have made, but chose not to make, in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv).

#### DECISION

We affirm the Examiner's decision rejecting claims 1, 6, 7, 12, 13, and 18 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).

AFFIRMED