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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SETH PRIEBATSCH

Appeal 2019-000118
Application 14/460,628
Technology Center 3600

Before JUSTIN BUSCH, CATHERINE SHIANG, and SCOTT E. BAIN,
Administrative Patent Judges.

BUSCH, *Administrative Patent Judge.*

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner’s decision to reject claims 22–35 and 39–45, which constitute all the claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

CLAIMED SUBJECT MATTER

Appellant’s disclosure relates to “systems and methods for facilitating transactional processing of permission requests, e.g., requests to transfer

¹ We use the word Appellant to refer to “applicant” as defined in 37 C.F.R. § 1.42(a). Appellant identifies the real party in interest as SCVNGR, Inc. Appeal Br. 2.

money in order to complete purchase transactions.” Spec. ¶ 1. More specifically, embodiments of Appellant’s claimed invention pass tokens indicating certain authorizations and a request for a payment transaction to a permissions manager. Spec. ¶¶ 7–8. The permissions manager verifies the tokens and, in accordance with the payment transaction request and the token information, submits a charge to a payment instrument associated with the user-access token and provides information regarding the payment transaction. Spec. ¶ 7–8. Claim 22 is representative of the claimed subject matter and reproduced below:

22. A method for facilitating an electronic payment transaction between a consumer and a resource provider, the method comprising:

electronically receiving, from a request-manager device, a request for permission to act on behalf of a consumer;

electronically providing, to a consumer device, a request for approval of a user-access token identifying the consumer, said approval comprising information concerning the request for permission;

electronically providing, to the request-manager device, the user-access token following approval thereof by the consumer;

electronically receiving, from the request-manager device, the consumer-approved user-access token, a facilitation token comprising permissions for the request-manager device to act with respect to a resource provider, and a request for a payment transaction;

upon verification of the tokens, electronically submitting for authorization to a payment processing device, in accordance with the request for a payment transaction and information in the tokens, a charge to a payment instrument associated with the received user-access token; and

electronically providing to a resource-provider device and to the request-manager device information concerning the payment transaction by the consumer.

REJECTIONS²

Claims 22–35 and 39–45 stand rejected under 35 U.S.C. § 101 as being directed to ineligible subject matter. Final Act. 6–14.

Claims 22–35 and 39–45 stand rejected under 35 U.S.C. § 112(a) for failing to provide written description support for the claimed subject matter. Final Act. 15–23.

Claims 22–35 and 39–45 stand rejected under 35 U.S.C. § 112(b) as indefinite. Final Act. 23–24.

Claims 22–35 and 39–45 stand rejected under 35 U.S.C. § 103 as obvious in view of Coxe (US 2015/0332029 A1; Nov. 19, 2015) and Ginter (US 5,892,900; Apr. 6, 1999). Final Act. 24–28.

ANALYSIS

We have reviewed the Examiner’s rejections in light of Appellant’s arguments that the Examiner erred. In reaching this decision, we have considered all evidence presented and all arguments Appellant made. Arguments Appellant could have made, but chose not to make in the Briefs, are deemed waived. *See* 37 C.F.R. § 41.37(c)(1)(iv).

THE 35 U.S.C. § 101 REJECTION

The Examiner concludes claims 22–35 and 39–45 are directed to judicially excepted subject matter. Final Act. 6–14; Ans. 4–8. More specifically, the Examiner determines Appellant’s claims are directed to a third party managing/brokering “the transactional relationship between

² Appellant canceled claims 36–38 after filing the Notice of Appeal but prior to filing the Appeal Brief. *See* After-Final Response (May 9, 2018). The Examiner entered the amendment canceling claims 36–38. Advisory Act. (May 18, 2018).

buyer and seller”—i.e., “the settlement of a financial transaction through an intermediary.” Ans. 5 (quoting Appeal Br. 8 (quoting Spec. ¶¶ 3)); Final Act. 8 (citing Spec. ¶¶ 6, 25). The Examiner determines additional elements, alone and in combination, do not improve a technology, but include only insignificant extra-solution activity and generic components or entities that amount to implementing the abstract idea on a computer. Final Act. 8–10 (citing *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208 (2014) and distinguishing Federal Circuit cases finding claims eligible); Ans. 6 (citing Spec. ¶¶ 26, 61); *see also* Spec. 7 (noting Appellant acknowledges that the recited devices and steps are conventional on pages 8 and 9 of the Appeal Brief).

Appellant argues the eligibility of claims 22–35 and 39–45 under 35 U.S.C. § 101 as a group. Appeal Br. 7–9; Reply Br. 3–5. We select independent claim 22 as representative of claims 22–35 and 39–45. 37 C.F.R. § 41.37(c)(1)(iv).

The Supreme Court’s two-step framework guides our analysis of patent eligibility under 35 U.S.C. § 101. *Alice*, 573 U.S. at 217. In addition, the United States Patent and Trademark Office published revised guidance for evaluating subject matter eligibility under 35 U.S.C. § 101, specifically with respect to applying the *Alice* framework. USPTO, *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Guidance”).

If a claim falls within one of the statutory categories of patent eligibility (i.e., a process, machine, manufacture, or composition of matter), we determine whether the claim is directed to one of the judicially recognized exceptions (i.e., a law of nature, a natural phenomenon, or an

abstract idea). *Alice*, 573 U.S. at 217. As part of our inquiry, 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 Tex., LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1257 (Fed. Cir. 2016). The Guidance directs us to address this inquiry using the following two prongs of analysis: (i) does the claim recite a judicial exception (e.g., an abstract idea), and (ii) if so, is the judicial exception integrated into a practical application. 84 Fed. Reg. at 54.

Under the Guidance, if the judicial exception is integrated into a practical application, the claim is patent eligible under § 101. 84 Fed. Reg. at 54–55. If the claim is directed to a judicial exception (i.e., the claim both recites a judicial exception and fails to integrate the exception into a practical application), we next determine whether the claim provides an inventive concept, which includes determining whether any element, or combination of elements, amounts to significantly more than the judicial exception. *Alice*, 573 U.S. at 217; 84 Fed. Reg. at 56.

Here, we conclude representative claim 22 recites an abstract idea. More specifically, claim 22 generally is directed to verifying two parties to a requested payment transaction have authorized a third party to act on their behalf and completing the payment transaction in accordance with the request. This is consistent with how Appellant describes the problem and solution the claimed invention addresses. Appeal Br. 2 (“With respect to embodiments within independent claim 22, Appellant has invented a method for facilitating an electronic payment transaction between a consumer and a resource provider.”), 8 (quoting Spec. ¶¶ 3, 6); *see* Spec. ¶¶ 3 (noting that third parties often act as aggregators and payment processors between a

buyer and seller), 6 (noting third-party transactions create a need to improve permissions management for payments and other transactions). Processing a financial transaction and providing information is a commercial interaction (sales activity) and falls within a certain method of organizing human activity—an abstract idea. *See* 84 Fed. Reg. at 52; *see also Alice*, 573 U.S. at 219 (explaining that intermediated settlement was abstract because it was a longstanding fundamental economic practice similar to hedging, which was found ineligible in *Bilski*); *Inventor Holdings, LLC v. Bed Bath & Beyond Inc.*, 123 F.Supp.3d 557, 561 (D.Del. 2015), *aff'd*, 643 F. App'x. 1014 (Mem) (Fed. Cir. 2016) (holding a claim reciting determining a price for and processing a remote order at a local point of sale system as describing “a ‘fundamental economic [or] conventional business practice[]’ and therefore an abstract idea” (quoting *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014))); *Clarilogic, Inc. v. FormFree Holdings Corp.*, 681 F. App'x 950, 954 (Fed. Cir. 2017) (unpublished) (concluding that gathering financial information is abstract—“a method for collection, analysis, and generation of information reports, where the claims are not limited to how the collected information is analyzed or reformed, is the height of abstraction”); *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1367–68 (Fed. Cir. 2015) (concluding that tracking financial transactions to determine whether they exceed a pre-set spending limit to be “not meaningfully different” from other ideas found to be abstract involving certain methods of organizing human activity).

Representative claim 22 is reproduced below, with the claim limitations that recite elements of the abstract idea of verifying two parties to a requested payment transaction have authorized a third party to act on their

behalf and completing the payment transaction in accordance with the request emphasized in *italics*:

22. *A method for facilitating an electronic payment transaction between a consumer and a resource provider, the method comprising:*

electronically receiving, from a request-manager device, a request for permission to act on behalf of a consumer;

electronically providing, to a consumer device, a request for approval of a user-access token identifying the consumer, said approval comprising information concerning the request for permission;

electronically providing, to the request-manager device, the user-access token following approval thereof by the consumer;

electronically receiving, from the request-manager device, the consumer-approved user-access token, a facilitation token comprising permissions for the request-manager device to act with respect to a resource provider, and a request for a payment transaction;

upon verification of the tokens, electronically submitting for authorization to a payment processing device, in accordance with the request for a payment transaction and information in the tokens, a charge to a payment instrument associated with the received user-access token; and

electronically providing to a resource-provider device and to the request-manager device information concerning the payment transaction by the consumer.

More particularly, verifying two parties to a requested payment transaction have authorized a third party to act on their behalf and completing the payment transaction in accordance with the request comprises (i) receiving a request to act on behalf of a consumer; (ii) requesting consumer approval for an indication of authority with respect to a request; (iii) providing the indication of authority, (iv) receiving, from a

third party, indications that the third party has authority to act on behalf of the consumer and a resource provider and a payment transaction request, (v) upon token verification, submitting a request to charge the consumer's payment instrument (e.g., credit card) to a payment processing system or entity in accordance with the received authority and payment transaction request; and (vi) providing information regarding the payment transaction to the other parties (i.e., the resource provider and the third party) to the transaction.

Verifying two parties to a requested payment transaction have authorized a third party to act on their behalf and completing the payment transaction in accordance with the request is a commercial interaction (a marketing or sales activity) and, therefore, an abstract idea because it falls within the certain method of organizing human activity category in our Guidance. *See* 84 Fed. Reg. at 52; *see also OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015) (holding a claim reciting selecting a price at which to sell a product as describing the automation of the fundamental economic concept of offer-based price optimization); *Versata Dev. Grp., Inc. v. SAP Am., Inc.*, 793 F.3d 1306, 1333 (Fed. Cir. 2015) (holding determining a price “using organizational and product group hierarchies” was an abstract idea); *Inventor Holdings*, 123 F.Supp.3d at 561; *Priceplay.com, Inc. v. AOL Advert., Inc.*, 83 F. Supp. 3d 577 (D.Del. 2015), *aff'd*, 627 F. App'x 925 (Fed. Cir. 2016) (holding a claim reciting calculating a price of a product as describing “the abstract idea of ‘a sales transaction,’ which is a fundamental economic concept”); *Federal Home Loan Mortg. Corp v. Graff/Ross Holdings LLP*, 893 F.Supp.2d 28, 36–37 (D.D.C. 2012), *aff'd*, 604 F. App'x. 930 (Mem) (Fed. Cir. 2015) (holding

that claims directed to computing a price for an electronic sale of a component of a fixed-income asset were directed to an abstract idea).

Because representative claim 22 recites a judicial exception, we next determine whether claim 22 integrates the judicial exception into a practical application. 84 Fed. Reg. at 54. To determine whether the judicial exception is integrated into a practical application, we identify whether there are “*any additional elements recited in the claim beyond the judicial exception(s)*” and evaluate those elements to determine whether they integrate the judicial exception into a recognized practical application. 84 Fed. Reg. at 54–55 (emphasis added); *see also* Manual of Patent Examining Procedure (“MPEP”) § 2106.05(a)–(c), (e)–(h) (9th ed. Rev. 08.2017, Jan. 2018).

Here, the additional limitations recited beyond the judicial exception itself fail to integrate the exception into a practical application. More particularly, the claims do not recite: (i) an improvement to the functionality of a computer or other technology or technical field (*see* MPEP § 2106.05(a)); (ii) a “particular machine” to apply or use the judicial exception (*see* MPEP § 2106.05(b)); (iii) a particular transformation of an article to a different thing or state (*see* MPEP § 2106.05(c)); or (iv) any other meaningful limitation (*see* MPEP § 2106.05(e)). *See also* 84 Fed. Reg. at 55.

Appellant asserts the claims are directed to patent eligible subject matter because the claims “recite very specific technology for carrying out transactions in the networked environment of mobile commerce” and “require two types of tokens . . . that govern the scope and validity of the transaction, and a specific sequence of data exchanges among devices.” Appeal Br. 7; *see* Reply Br. 3–4. Specifically, Appellant argues the claimed

technical elements are not fundamental, the claim does not cover merely the concept of intermediated settlement of a financial transaction, and “the elements of the claims cooperate to solve a specific technical problem” of facilitating permissions management for transactions. Appeal Br. 8 (citing Spec. ¶¶ 3, 6). Appellant also asserts that, when considered as a whole, Appellant’s “claims, with their use of complementary electronic tokens, clearly solve a ‘problem in a particular, technical way.’” Reply Br. 4 (citing *BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016)).

Contrary to Appellant’s arguments, Appellant’s claims are not similar to the claims found eligible in either *DDR Holdings* or *BASCOM*. The additional elements recited in representative claim 22 beyond the abstract idea merely require *particular devices* (i.e., a “request-manager device” and a “resource-provider device”) that receive, provide, and submit information *electronically*. In other words, Appellant merely claims using known technology (i.e., processing devices) to perform their known basic functions (i.e., executing instructions to receive, provide, and submit data) as a tool to execute the abstract idea of verifying two parties to a requested payment transaction have authorized a third party to act on their behalf and completing the payment transaction in accordance with the request. *See Alice*, 573 U.S. at 222 (using a computer to perform known processes is not enough to supply an inventive concept); Appeal Br. 13 (explaining that receiving, providing, and submitting information are “basic operations in the field of networks and telecommunications . . . implemented straightforwardly with commonly available equipment”); Spec. ¶¶ 43, 58, 74, 79. Accordingly, the physical components simply recite the use of

generic computer components as tools to implement the abstract idea but do not improve computer capabilities. *See* 84 Fed. Reg. at 55; MPEP § 2106.05(f); *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335–36 (Fed. Cir. 2016) (distinguishing between claims wherein the focus of the claims is on an improvement in computer capabilities and those that invoke a computer as a tool).

To the extent Appellant argues the tokens recited in representative claim 22 integrate the claims into a practical application, we disagree. Claim 22’s tokens are merely “indications of authority.” Spec. ¶ 25. Claim 22’s “user-access token” identifies the consumer, and claim 22’s “facilitation token” includes “permissions for the request-manager device.” *See* Appeal Br. 18 (claim 22). Even when these tokens include various limitations or restrictions, they are still just a collection of information delineating the permissions granted by one party to a third party.

Moreover, claim 22 merely uses the recited tokens conventionally—i.e., to store information that may include information regarding identity and permissions—and does not recite an improvement to token technology or to any technology or field related to the tokens. *See Enfish*, 822 F.3d at 1335–36. Appellant’s Specification supports this finding because the Specification does not describe tokens in any level of detail to indicate the invention is directed to an improvement in tokens or some related technology. Spec. ¶ 37 (“The token may be any form of digital data, such as a digital file, group of files, or data stream. . . . The present invention is not limited to any particular type or format of token, however, nor to any particular

information contained therein.”); *cf. Berkheimer Memo*³ § III.A.1. In fact, Appellant’s arguments and Specification indicate the invention is directed to an improvement in a transactional *process* because representative claim 22 recites a “unique sequence of steps and data—i.e., the specific chain of data transmissions and approvals that collectively consummate a transaction conveniently, reliably, and in accordance with pre-established permissions.” Appeal Br. 13; *see* Spec. ¶¶ 3–6, 8.

Regarding Appellant’s argument that the claims provide a specific technological solution to a technical problem, Appeal Br. 7–9; Reply Br. 3–5, we disagree. We addressed Appellant’s argument regarding the physical components and the tokens above. Furthermore, to the extent the claims recite a “unique sequence of steps and data” for completing a transaction, the sequence of steps and data constitute the abstract idea itself and, therefore, cannot integrate the abstract idea into a practical application. We look to the elements recited *in addition to* the abstract idea to determine whether the claims integrate the abstract idea into a practical application. 84 Fed. Reg. at 54. We disagree that the claim recites an improvement to the functionality of a computer, other technology, or a technical field because, other than the abstract idea, the claims recite only generic computer components and

³ “Changes in Examination Procedure Pertaining to Subject Matter Eligibility, Recent Subject Matter Eligibility Decision (*Berkheimer v. HP, Inc.*)” at 3 (Apr. 19, 2018), available at <https://www.uspto.gov/sites/default/files/documents/memo-berkheimer-20180419.PDF> (explaining that a specification that describes additional elements “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)” can show that the elements are well understood, routine, and conventional).

performing basic operations, as explained above. We note that “relying on a computer to perform routine tasks more quickly or more accurately is insufficient to render a claim patent eligible.” *Bancorp Servs., L.L.C. v. Sun Life Assur. Co. of Can. (U.S.)*, 687 F.3d 1266, 1278 (Fed. Cir. 2012) (a computer “employed only for its most basic function . . . does not impose meaningful limits on the scope of those claims”); *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015); *see Alice*, 573 U.S. at 224 (“use of a computer to create electronic records, track multiple transactions, and issue simultaneous instructions” is not an inventive concept).

Appellant’s reliance on *BASCOM*, Reply Br. 4, is unpersuasive. In *BASCOM*, the court found “the patent describes how its particular arrangement of elements is a technical improvement,” and, when construed in favor of *BASCOM*,⁴ the claims may be read to improve an existing technological process. *BASCOM*, 827 F.3d at 1350. As discussed above, representative claim 22 does not improve an existing technological process, but rather uses existing technology to perform the abstract idea or claim a desired functional goal (i.e., verify authority and complete a transaction). Additionally, Appellants do not clearly indicate what *additional* elements they believe recite an unconventional element or combination of elements. Furthermore, unlike the arrangement of elements (i.e., installation of a filtering tool at a specific location) in *BASCOM*, 827 F.3d at 1349–50, we see nothing in claim 22 that recites an unconventional or non-routine arrangement of known elements.

⁴ In *BASCOM*, *BASCOM* appealed the district court’s granting of a motion to dismiss under Fed. R. Civ. P. 12(b)(6). *BASCOM*, 827 F.3d at 1341.

In the Reply, Appellant contends the claims are similar to those in *DDR Holdings* because representative claim 22’s “division of permissions information into separately processable tokens makes no sense outside of the context of electronic transactions, and it addresses a problem meaningful only in this new technological context.” Reply Br. 3 (citing *DDR Holdings*, 773 F.3d at 1258). In *DDR Holdings*, the Federal Circuit determined “the claimed solution amount[ed] to an inventive concept for resolving [a] particular Internet-centric problem,” i.e., a challenge unique to the Internet. *DDR Holdings*, 773 F.3d at 1257–59; see *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (Fed. Cir. 2016) (noting that “[i]n *DDR Holdings*, we held that claims ‘directed to systems and methods of generating a composite web page that combines certain visual elements of a ‘host’ website with content of a third-party merchant’ contained the requisite inventive concept”). The Federal Circuit explained that the patent-eligible claims specified “how interactions with the Internet are manipulated to yield a desired result . . . that overrides the routine and conventional sequence of events ordinarily triggered by the click of a hyperlink.” *DDR Holdings*, 773 F.3d at 1258. The court reasoned that those claims recited a technological solution “necessarily rooted in computer technology” that addressed a “problem specifically arising in the realm of computer networks.” *DDR Holdings*, 773 F.3d at 1257. Here, unlike the claims at issue in *DDR Holdings*, Appellant’s claims rely on generic devices and tokens “operating in [their] normal, expected manner” in support of the abstract idea. *DDR Holdings*, 773 F.3d at 1258–59. Therefore, in contrast to the claims in *DDR* and *BASCOM*, claim 22 does not improve an existing

technological process and, for the above reasons, representative claim 22 does not integrate the judicial exception into a practical application.

Because we determine claim 22 is directed to an abstract idea, we analyze the claims under step two of *Alice* to determine whether there are additional limitations that individually, or as an ordered combination, ensure the claims amount to “significantly more” than the abstract idea. *Alice*, 573 U.S. at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 72–73, 77–79 (2012)). As stated in the Guidance, many of the considerations to determine whether the claims amount to “significantly more” under step two of the *Alice* framework are already considered as part of determining whether the judicial exception has been integrated into a practical application. 84 Fed. Reg. at 56. Thus, at this point of our analysis, we determine if the claims (1) add a specific limitation, or combination of limitations, that is not well-understood, routine, conventional activity in the field, or (2) simply append well-understood, routine, conventional activities at a high level of generality. 84 Fed. Reg. at 56.

Appellant generally asserts the Examiner failed to establish that the claims as a whole were “well-understood, routine, and conventional.” Appeal Br. 9. Appellant also argues the claims are similar to *BASCOM*, and quotes the Federal Circuit’s statement that “an inventive concept can be found in the non-conventional and non-generic arrangement of known, conventional pieces.” Reply Br. 4 (quoting *BASCOM*, 827 F.3d. at 1350). Appellant’s arguments, however, fail to identify any *additional element* or particular *combination of elements* that allegedly are unconventional, non-routine, or not well-understood. See Appeal Br. 9; Reply Br. 4. The Examiner cites cases and Appellant’s Specification in support of the finding

that the generic computer components were well-understood, routine, and conventional performing conventional computer operations. Final Act. 9–10; Ans. 6 (citing Spec. ¶¶ 26, 61). Accordingly, Appellant’s general assertion fails to identify error in the Examiner’s findings.

An inventive concept “cannot be furnished by the unpatentable law of nature (or natural phenomenon or abstract idea) itself.” *Genetic Techs. Ltd. v. Merial L.L.C.*, 818 F.3d 1369, 1376 (Fed. Cir. 2016); *see also* 84 Fed. Reg. at 56; *Alice*, 573 U.S. at 217 (explaining that, after determining a claim is directed to a judicial exception, “we then ask, ‘[w]hat else is there in the claims before us?’” (emphasis added, brackets in original) (quoting *Mayo*, 566 U.S. at 78)). Instead, an “inventive concept” is furnished by an element or combination of elements that is recited in the claim *in addition to* the judicial exception and sufficient to ensure the claim as a whole amounts to significantly more than the judicial exception itself. *Alice*, 573 U.S. at 218–19 (citing *Mayo*, 566 U.S. at 72–73); *see BSG Tech LLC v. BuySeasons, Inc.*, 899 F.3d 1281, 1290 (Fed. Cir. 2018) (explaining that the Supreme Court in *Alice* “only assessed whether the claim limitations *other than the invention’s use of the ineligible concept* to which it was directed were well-understood, routine and conventional,” (emphasis added)).

To the extent Appellant argues the recited devices or tokens are beyond what was well-understood, routine, and conventional in the field, we disagree. As the Examiner notes, Appellant’s Specification clearly indicates the devices may be general purpose computers having generic components. Ans. 6; Spec. ¶¶ 26, 61. Moreover, as discussed above, the recited tokens are merely information used in a conventional manner. Spec. ¶¶ 25, 30, 34, 35, 37 (“The token may be any form of digital data, such as a digital file, group

of files, or data stream. . . . The present invention is not limited to any particular type or format of token, however, nor to any particular information contained therein.”). Appellant does not identify a particular unconventional, non-routine, or not well-understood ordered combination of elements.

Nor do we see such a combination because the additional elements as recited perform only their basic functions both individually and in combination. Representative claim 22 fails to recite specific limitations (or a combination of limitations) that are not well-understood, routine, and conventional. Rather, the only additional elements (i.e., the devices and electronic transmission of information) are generic computer components recited at a high level of generality performing basic computer functions, none of which Appellant argues is beyond what was well-understood, routine, and conventional in the art. *See* Spec. ¶¶ 26, 61; Appeal Br. 13.

To the extent Appellant argues the particular order of steps or the particular data add significantly more, we note that these steps are part of the ineligible abstract idea. “If a claim’s only ‘inventive concept’ is the application of an abstract idea using conventional and well-understood techniques, the claim has not been transformed into a patent-eligible application of an abstract idea.” *BSG Tech*, 899 F.3d at 1290–91 (citing *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1370 (Fed. Cir. 2018)). “[I]t is irrelevant whether [the claimed abstract idea] may have been non-routine or unconventional as a factual matter . . . narrowing or reformulating an abstract idea does not add ‘significantly more’ to it.” *BSG Tech*, 899 F.3d at 1291.

For the above reasons, Appellant has not persuaded us of Examiner error, and we sustain the Examiner's rejection of claims 22–35 and 39–45 under 35 U.S.C. § 101.

THE 35 U.S.C. § 112(a) REJECTION

The Examiner rejects claims 22–35 and 39–45 under 35 U.S.C. § 112(a) as lacking written description support. Final Act. 15–23. In particular, the Examiner finds insufficient written description support for “electronically providing, to a consumer device, a request for approval of a user-access token,” as recited in independent claim 22 and commensurately recited in independent claim 34. Final Act. 15. The Examiner also finds insufficient written description support for various devices/entities and functional language recited in the computer implemented claims. Final Act. 15–23 (citing MPEP § 2161.01(I)) (finding the Specification discloses only a general purpose computer without an algorithm for the devices/entities to perform the computer-implemented functions).

To satisfy the written description requirement, the disclosure must reasonably convey to an ordinarily skilled artisan that Appellant possessed the claimed invention as of the filing date. *See Ariad Pharms., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1351 (Fed. Cir. 2010) (en banc). Specifically, “the description must ‘clearly allow persons of ordinary skill in the art to recognize that [the inventor] invented what is claimed,’” and “the specification must describe an invention understandable to that skilled artisan and show that the inventor actually invented the invention claimed.” *Ariad Pharms., Inc.*, 598 F.3d at 1351. Additionally, the Examiner has the initial burden of presenting evidence or reasons why persons skilled in the art would not recognize in an applicant's disclosure a description of the

invention defined by the claims. *In re Wertheim*, 541 F.2d 257, 265 (CCPA 1976).

Regarding the rejection of “providing, to a consumer device, a request for approval of a user-access token,” the Examiner finds the Specification describes providing a request for a consumer device to approve *creation* of a token but not a request for a consumer device to approve an already-existing token that includes consumer information. Final Act. 15; Ans. 13. Appellant argues only that “the relevant claim language is fully supported at, for example, paragraphs [0028] and [0034] of the specification.” Appeal Br. 12.

Specification paragraph 28 generally discloses that the system may include generic components (i.e., “a server or other computer including a processor, memory, storage, and/or input/output interface”) and computer instructions for performing the various generic functions of collecting, receiving, and transmitting information; granting a transaction request based on permissions; and processing a payment associated with a request. Spec. ¶ 28. As the Examiner explains, Specification paragraph 34 discloses a process for a consumer device to approve “*the creation of the token*,” but does not describe providing a consumer device a request to approve a token. Spec. ¶ 34 (emphasis added).

Appellant’s argument merely points us to these two Specification paragraphs that the Examiner notes support a *different* function than the function recited in claims 22 and 34. Appellant fails to persuasively explain why a person of ordinary skill in the art would have understood the inventor to be in possession of sending a request to a consumer device for approval of a token given the Specification’s description of a different function— sending a request to a consumer device for approval to *create* a token.

Accordingly, we are not persuaded of error in the Examiner's rejection of claims 22–35 and 39–45 under 35 U.S.C. § 112(a) for failing to provide adequate written description support for “providing, to a consumer device, a request for approval of a user-access token,” as recited in independent claims 22 and 34.

Regarding the remaining rejections under 35 U.S.C. § 112(a), the Examiner finds various limitations recite functions performed by devices or entities, and neither the claims nor the Specification provide structure for those devices or entities or algorithms for the performing the functions. Final Act. 15–23 (citing MPEP § 2161.01(I)). In particular, the Examiner finds insufficient structure or algorithms to support the following functions recited in claims 22, 24–29, 31, 34, 39–41, and 43: the creation of the user-access token, the creation of the facilitation token, determining whether a transaction qualifies for a promotion, reducing a charge based on a promotion, causing funds to be transferred, storing information about the request for payment transaction, transmitting a promotional offer. Final Act. 15–23. The Examiner also finds claims 22, 24–29, 31, 34, 39–41, and 43 are “broad enough in scope to read on any and all means for performing the recited function” such that each claim could “be viewed as a claim to a genus however the written description fails to provide sufficient species in the form of programmable algorithms or any description of structural properties that would provide sufficient support for the claiming of a genus.” Final Act. 17–23.

Claim 22 is a method reciting six steps: (1) receiving information (a request for permission); (2) providing information (a request for approval of a user-access token); (3) providing information (the user-access token);

(4) receiving information (two tokens and a payment transaction request);
(5) submitting information (a charge to a payment instrument) to a payment processing device in response to a condition (verification of tokens); and
(6) providing information (information concerning the payment transaction).
Appeal Br. 18 (claim 22). Claim 34 recites a system including a processor configured to execute instructions for performing these same steps. Appeal Br. 20 (claim 34).

Notably, claims 22 and 34 do not recite functional limitations of creating a user-access token or creating a facilitation token. Therefore, the Examiner erred in finding that the Specification does not have written description support because these functions are not recited in claims 22 and 34. The “storing information concerning the request for payment transaction in a user database record associated with the user” step, which is recited in claims 28 and 40, and the “electronically transmitting a promotional offer” step, which is recited in claims 29 and 40, are basic computer functions that need no algorithm for a person of ordinary skill in the art to understand that the inventor was in possession of these steps.

On the other hand, the “determining whether the request for payment transaction qualifies for a promotion” step recited in claim 24 and the “reducing the amount of the charge submitted for authorization based on a promotion” step recited in claim 26 are not basic computer functions similar to sending, receiving, and storing. Appellant argues the Specification describes the various systems structurally and that “no single algorithm” is “disclosed because the functions performed by the offer-analysis module do not reduce to an algorithm.” Appeal Br. 14–15. Appellant, however fails to address the Examiner’s finding that the claims are broad enough to cover

any and all means of performing the recited functions and the Specification does not disclose sufficient support for performing the recited function by any means. Final Act. 19–20. Therefore, on this record, we sustain the Examiner’s rejection of claims 24 and 26 under 35 U.S.C. § 112(a) for failing to provide adequate written description support. We also affirm the Examiner’s rejection of claim 25 on this basis because claim 25 depends from, and incorporates the limitations of, claim 24.

Similar to the additional steps recited in claims 24 and 26, the “causing funds to be transferred to the resource-provider following the payment transaction” step recited in claims 27 and 39 is not a basic computer function. Appellant similarly identifies the Specification’s structural description of the permission management system that performs the step of causing funds to be transferred. Appeal Br. 15. With respect to this step recited in claims 27 and 39, Appellant also identifies disclosure describing how the payment-processing module processes a payment (i.e., “causes funds to be transferred”). Therefore, on this record, we do not sustain the Examiner’s rejection of claims 27 and 39 under 35 U.S.C. § 112(a) for failing to provide adequate written description support.

For the above reasons, we are persuaded the Examiner erred in rejecting claims 22, 23, 27–35, and 39–45 under 35 U.S.C. § 112(a) for failing to provide adequate written description support for the variously recited functional limitations. However, we are not persuaded the Examiner erred in rejecting claims 24–26 under 35 U.S.C. § 112(a) for failing to provide adequate written description support for the variously recited functional limitations. Nevertheless, because we agree with one of the Examiner’s bases for rejecting claims 22–35 and 39–45 under 35 U.S.C.

§ 112(a), we sustain the Examiner's rejection under 35 U.S.C. § 112(a) of claims 22–35 and 39–45.

THE 35 U.S.C. § 112(b) REJECTION

The Examiner concludes claims 22–35 and 39–45 are indefinite. Final Act. 23–24. In particular, the Examiner finds the step “upon verification of the tokens, electronically submitting for authorization to a payment processing device, in accordance with the request for a payment transaction and information in the tokens, a charge to a payment instrument associated with the received user-access token,” recited in independent claims 22 and 34, is indefinite. Final Act. 23–24. The Examiner finds these claims indefinite because the claims’ failure to affirmatively recite “verifying the tokens” or directly tie the recited “information in the tokens” to content previously recited as being included in the tokens makes it “unclear how the tokens can be considered verified without an actual operation of verification or how the submission can be in ‘accordance with... information in the tokens.’” Final Act. 23–24. The Examiner also finds it is unclear whether verification must be performed to infringe claims 22 and 34. Ans. 21.

Appellant argues the clause “upon verification of the tokens” adequately conveys what is claimed and the Specification discloses several verification techniques. Appeal Br. 13 –14 (quoting Spec ¶ 42). Appellant does not directly address the Examiner’s findings regarding the submission of a charge “in accordance with . . . information in the tokens.”

Although Appellant’s arguments are minimal, on this record, we disagree with the Examiner. The Examiner is correct that “no actual step of verification is being claimed.” Ans. 21. Accordingly, claims 22 and 34 do not require an actual step of verifying the tokens. Rather, claims 22 and 34

merely require that someone or something has verified the tokens at some point and, “upon verification of the tokens,” electronically submitting the charge. The Examiner is also correct that the submission must be in “accordance with . . . information in the tokens,” Ans. 21, but that information need not be particular information recited earlier in the claims. Both of these clauses the Examiner identifies render claims 22 and 34 extremely broad, but we disagree that this breadth renders claims 22 and 34 indefinite. Rather, to render the claimed subject matter obvious, the prior art need only teach or suggest “upon verification of the tokens,” electronically submitting a charge (i.e., the art may verify the tokens or receive some indication that the tokens were verified and, in response to that, submit the charge) for authorization to a payment processing device in accordance with the request and *any* “information in the tokens.” For these reasons, we agree the Examiner erred in rejecting claims 22–35 and 39–45 as indefinite under 35 U.S.C. § 112(b).

THE 35 U.S.C. § 103 REJECTION

Appellant argues claims 22–35 and 39–45 as a group. Appeal Br. 9–11; Reply Br. 5–6. We select independent claim 22 as representative of claims 22–35 and 39–45. 37 C.F.R. § 41.37(c)(1)(iv).

The Examiner finds the combination of Coxe and Ginter teaches or suggests every limitation recited in claims 22–35 and 39–45. Final Act. 25–28. With respect to representative claim 22, the Examiner finds Coxe teaches or suggests the steps relating to receiving requests for permission to act on behalf of the consumer, providing a request for approval of a user-access token, providing the user-access token, receiving the two tokens and the transaction request, and, although not affirmatively recited, verifying the

tokens. Final Act. 25–26. The Examiner finds Ginter teaches or suggests the limitations relating to submitting and processing a payment transaction and providing information regarding the transaction. Final Act. 26. The Examiner also provides a rationale for combining the cited teachings from Coxe and Ginter. Final Act. 26.

Appellant argues Coxe fails to teach bifurcated tokens and fails to teach a second token at all, let alone the recited “facilitation token.” Appeal Br. 10. Appellant contends Coxe’s permission granted from a relying party (RP) to the attributed exchange network (AXN) for facilitating payments to other members of the AXN does not equate to a facilitation token, as recited in the claims. Reply Br. 6. Appellant acknowledges that Ginter discloses managing electronic payment transactions, including using payment tokens,” but Appellant argues Ginter fails to teach or suggest distinguishing “between entities that can be equated to a resource-provider device and a request-manager device.” Appeal Br. 11; Reply Br. 6.

The Examiner notes the claims do not recite particular elements of the facilitation token other than the fact that the token comprises permissions to act with respect to a resource provider. Ans. 8. The Examiner finds Coxe discloses that a relying party may register with the AXN to establish service options, including authorizing the AXN to make payments to other entities (e.g., identity providers (IPs) and attribute providers (APs)) in the exchange network on the relying party’s behalf. Ans. 8–9 (citing Coxe ¶¶ 7, 40, 44, 45, 60, 61). Therefore, the Examiner finds Coxe’s RP granting permission to the AXN teaches or suggests the second “facilitation token” recited in claim 22. Ans. 9 (citing Coxe ¶¶ 7, 44, 45, 60, 61). The Examiner finds Ginter teaches providing information to participants involved in electronic activities and

Appellant has not demonstrated that Ginter's parties fail to teach or suggest the claimed resource provider and request manager. Ans. 10–11.

We agree with the Examiner that representative claim 22 broadly claims the facilitation token and generally recites no particular requirements. Additionally, as we discussed above, the Specification discloses that tokens are merely “indications of authority.” Spec. ¶ 25; *see also* Spec. ¶ 37 (“The token may be any form of digital data, such as a digital file, group of files, or data stream. . . . The present invention is not limited to any particular type or format of token, however, nor to any particular information contained therein.”). Although Coxe does not explicitly describe the exact mechanism employed, Coxe discloses that its RPs may provide permission for the AXN to make payments to IPs or APs on its behalf, which is an indication of authority.” Accordingly, we disagree with Appellant that Coxe fails to teach or suggest the recited facilitation token.

Appellant has not persuaded us that Ginter fails to teach providing information to the resource-provider device and the request-manager device. The Examiner finds Ginter teaches the steps related to payment transactions, including the step of providing information concerning the payment transaction to the parties to the transaction. Final Act. 26; Ans. 10–11. Appellant does not dispute that Ginter teaches electronically transmitting information regarding the transaction, but argues Ginter does not distinguish between the resource-provider device and the request-manager device and the roles those devices play. Appeal Br. 11; Reply Br. 6. However, given that Ginter teaches electronically transmitting information regarding a transaction involving multiple parties, we agree with the Examiner that

Ginter at least suggests transmitting that information to devices associated with each of the parties to the transaction.

For the above reasons, we are not persuaded the Examiner erred in rejecting representative claim 22 under 35 U.S.C. § 103 as obvious in view of the combination of Coxe and Ginter. For the same reasons, we are not persuaded the Examiner erred in rejecting claims 23–35 and 39–45, not argued separately with particularity.

CONCLUSION

We sustain the Examiner's decision to reject claims 22–35 and 39–45 under 35 U.S.C. § 101.

We sustain the Examiner's decision to reject claims 22–35 and 39–45 as indefinite under 35 U.S.C. § 112(a).

We reverse the Examiner's decision to reject claims 22–35 and 39–45 as indefinite under 35 U.S.C. § 112(b).

We sustain the Examiner's decision to reject claims 22–35 and 39–45 under 35 U.S.C. § 103.

DECISION SUMMARY

In summary:

Claims Rejected	35 USC §	References/Basis	Affirmed	Reversed
22-35, 39-45	101	Ineligible	22-35, 39-45	
22-35, 39-45	112(a)	Written Description	22-35, 39-45	
22-35, 39-45	112(b)	Indefinite		22-35, 39-45
22-35, 39-45	103	Coxe, Ginter	22-35, 39-45	
Overall Outcome			22-35, 39-45	

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)(1)(iv).

AFFIRMED