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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte AHMNON D. MOSKOWITZ

Appeal 2019-000183
Application 14/467,006
Technology Center 3700

Before STEFAN STAICOVICI, CHARLES N. GREENHUT, and
JEREMY M. PLENZLER, *Administrative Patent Judges*.

STAICOVICI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant¹ appeals under 35 U.S.C. § 134(a) from the Examiner’s decision in the Non-Final Office Action (dated Feb. 5, 2018, hereinafter “Non-Final Act.”) rejecting claims 1, 6–11, and 34–40.² We have jurisdiction over this appeal under 35 U.S.C. § 6(b).

¹ We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Ahmnon D. Moskowitz, the inventor, is identified as the real party in interest in Appellant’s Appeal Brief (filed May 31, 2018, hereinafter “Appeal Br.”). Appeal Br. 2.

² Claims 2–5 and 12–33 are canceled. *See* Appeal Br. 16, 17 (Claims App.).

SUMMARY OF DECISION

We AFFIRM.

INVENTION

Appellant's invention is directed to "a lottery game in which player selected numbers and/or symbols based on dates are compared to winning numbers and symbols based on dates for determining a value payout to the player." Spec. para. 2.

Claims 1 and 38 are independent. Claim 1 is illustrative of the claimed invention and is reproduced below (with reference indicators added in brackets):

1. A method for playing a lottery game based upon picking and choosing date indicia variables, the method comprising:
 - [i] inputting, on a remote bet input terminal, a plurality of date indicia variables representing days in a calendar year on a calendar matrix and a bet amount;
 - [ii] wherein a player selects the plurality of date indicia variables with each indicia variable representing the specific day of the calendar year;
 - [iii] transmitting, from a remote bet input terminal, in response to the selection of date indicia variables, the plurality of date indicia variables and the bet amount to a central lottery computer system;
 - [iv] generating, using the remote bet input terminal, a printed ticket by transforming the plurality of date indicia variables to date indicia on the printed ticket;
 - [v] receiving, from said central lottery computer system, a plurality of winning date variables from a parameter with indicia selected from a group consisting of a single calendar year, the plurality of winning date variables selected by a gaming operator, wherein the number of winning date variables are greater than the number of date indicia values selected by the player; and

[vi] comparing, on a central processor, the plurality of winning date variables against the plurality of date indicia on the printed ticket, such that if a plurality winning date variables match date indicia variables on the printed ticket, the central lottery computer system sends a signal when the lottery ticket is scanned identifying it as a winner, and

[vii] wherein the payout on the bet input terminal for matching the date indicia variables on the printed ticket to the winning date variables on the central lottery computer system includes a top payout for matching all of the winning date variables, and a subordinate payout for matching part of the winning date variables, wherein the amount of the payout is based on the cumulative probability of the matching of the winning date variables to the date indicia variables and their frequency of occurrence.

REJECTION

The Examiner rejects claims 1, 6–11, and 34–40 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter.

ANALYSIS

Section 101 states, “[w]hoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.” 35 U.S.C. § 101. However, the Supreme Court has “long held that this provision contains an important implicit exception: [l]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*. See *Alice*, 573 U.S. at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–77 (2012)). In accordance with that framework, we first determine what concept the claim is “directed to.” *Id.* at 219 (“On their face, the claims before us are drawn to the concept of intermediated settlement, *i.e.*, the use of a third party to mitigate settlement risk.”); see also *Bilski v. Kappos*, 561 U.S. 593, 611 (2010) (“Claims 1 and 4 in petitioners’ application explain the basic concept of hedging, or protecting against risk.”).

Concepts determined to be abstract ideas, and thus patent ineligible, include certain methods of organizing human activity, such as fundamental economic practices (*Alice*, 573 U.S. at 219–20; *Bilski*, 561 U.S. at 611); mathematical formulas (*Parker v. Flook*, 437 U.S. 584, 594–95 (1978)); and mental processes (*Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)). Concepts determined to be patent eligible include physical and chemical processes, such as “molding rubber products” (*Diamond v. Diehr*, 450 U.S. 175, 191 (1981)); “tanning, dyeing, making water-proof cloth, vulcanizing India rubber, smelting ores” (*id.* at 182 n. 7 (quoting *Corning v. Burden*, 56 U.S. 252, 267–68 (1853))); and manufacturing flour (*Benson*, 409 U.S. at 69 (citing *Cochrane v. Deener*, 94 U.S. 780, 785 (1876))).

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.* ((alteration in the original) 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 has published revised guidance on the application of § 101. 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) (hereinafter “2019 Guidance”).³ Under Step 2A of 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, in Step 2B, to whether the claim:

- (3) adds a specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field (*see* MPEP § 2106.05(d)); or
- (4) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.

³ An update to that guidance, available at https://www.uspto.gov/sites/default/files/documents/peg_oct_2019_update.pdf, was provided in October 2019.

Appellant does not present separate arguments for the patentability of independent claims 1 and 38. *See* Appeal Br. 13. Therefore, the following analysis applies equally to both independent claims 1 and 38.

Step 1 – Statutory Category

We first determine whether independent claims 1 and 38 recite one or more of the enumerated statutory classes of subject matter, i.e., process, machine, manufacture, or composition of matter, eligible for patenting under 35 U.S.C. § 101. Here, independent claims 1 and 38 recite a method for playing a lottery game (i.e., a “process”) and a lottery system for playing a lottery game (i.e., a “machine”), respectively. *See* Appeal Br. 15, 17–18 (Claims App.). Thus, like Appellant, we find that independent claims 1 and 38 recite recognized statutory categories under 35 U.S.C. § 101. *See id.* at 6.

Step 2A, Prong 1 – Recitation of Judicial Exception

We next look to whether independent claims 1 and 38 recite any judicial exceptions, including certain groupings of abstract ideas, i.e., mathematical concepts, certain methods of organizing human activity, or mental processes.

In determining that independent claims 1 and 38 constitute a judicial exception to patent eligibility, the Examiner determines that the claims recite “a method of determining financial obligations based on probability” that “can be performed in a human mind with the aid of pen and paper.” Non-Final Act. 2, 4. The Examiner explains that claims 1 and 38 are similar to the claims held ineligible in *In re Smith*, 815 F.3d 816 (Fed. Cir. 2016). *Id.* at 2.

In response, Appellant asserts “that the present claims disclose a novel and improved method and system for playing a lottery game based upon picking and choosing date indicia variables,” and, “are not a ‘fundamental economic practice’, ‘certain method of organizing human activities’ or ‘an idea of itself’.” Appeal Br. 6, 8. According to Appellant, the recited steps are similar to those found in *Trading Technologies International, Inc. v. CQC., Inc.*, 675 F. App’x 1001 (Fed. Cir. 2017), which “solves problems that arise when a trader attempts to enter an order at a particular price, but misses the price because the market moved before the order was entered and executed.” *Id.* at 8. Appellant contends that similar to claim 1 of *Trading Technologies*, instant “[c]laim 1 provides active method steps that address the problem allowing players to pick numbers based on dates they feel have significance to them.” *Id.* at 8–9 (citing Spec. para. 6).

Each of independent claims 1 and 38 involves a computerized lottery game, i.e., a game of chance, involving a player selecting a specific date in a calendar year, matching the chosen date to a winning date, and determining a player payout based on the results of the matching. *See* Appeal Br. 15, 17–18 (Claims App.). Thus, claims 1 and 38 recite “[c]ertain methods of organizing human activity” in terms of “fundamental economic principles or practices” of exchanging and resolving financial obligations based on probabilities and “organizing human activity” by “managing personal behavior or relationships or interactions between people . . . [by] following rules or instructions,” which are abstract ideas. 2019 Guidance 52. Therefore, we agree with the Examiner that independent claims 1 and 38 recite “*rules* to a lottery game,” which use “probability to determine winners

and losers.” Ans. 5.^{4,5} (emphasis added). The Examiner is correct that because “[w]inners are paid money or some other object of value for winning,” “the method uses probability to determine financial obligations.” *Id.* As such, we do not agree with Appellant that independent claims 1 and 38 are similar to the claims in *Trading Technologies*, where the claimed graphical user interface imparts a specific functionality to a trading system, because as the Examiner correctly notes, “[t]he *Trading Technologies* case is simply not applicable to Appellant’s claims” that recite a lottery game. *Id.* at 8.

Rather, the Examiner’s description is consistent with *In re Smith*, 815 F. 3d 818–19 (holding that the “claimed ‘method of conducting a wagering game’ is drawn to an abstract idea much like *Alice*’s method of exchanging financial obligations and *Bilski*’s method of hedging risk.”) and *In re Guldenaar*, 911 F.3d 1157, 1160 (Fed. Cir. 2018) (approving the Board’s holding in *Smith* that “[a] wagering game is, effectively, a method of exchanging and resolving financial obligations based on probabilities created during the distribution of the cards” and holding that the claimed method of playing a dice game by placing wagers on whether certain die faces will appear face up recites “a method of conducting a wagering game,

⁴ Examiner’s Answer, dated Aug. 6, 2018.

⁵ Although we appreciate that independent claim 38 is drawn to a system, as claims 1 and 38 recite similar limitations, “the basic character of a process claim drawn to an abstract idea is not changed by claiming only its performance by computers, or by claiming the process embodied in program instructions on a computer readable medium.” *See CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1375–76 (Fed. Cir. 2011) (citing *In re Abele*, 684 F.2d 902 (CCPA 1982)).

with the probabilities based on dice rather than on cards”). Although Appellant employs a different wagering device, i.e., Appellant’s computer system, versus *Smith’s* “playing cards” or *Guldenaar’s* “dice,” does not alter or invalidate the Examiner’s analogy. *See also Planet Bingo, LLC v. VKGS LLC*, 576 F. App’x 1005, 1008 (Fed. Cir. 2014) (“[T]he claims here recite methods and systems for ‘managing a game of Bingo.’ . . . This is similar to the kind of ‘organizing human activity’ at issue in *Alice*.”).

In addition to reciting a certain method of organizing human activity, claims 1 and 38 also recite a “mental process” that can be performed practically in the human mind using pen (or pencil) and paper. In particular, we note that absent the use of the claimed “bet input terminal” and “lottery computer,” the Examiner is correct that “the underlying method can be performed in a human mind using pen and paper,” and, thus, the claims recite an abstract idea. *Ans. 5* (citing *CyberSource*, 654 F.3d at 1372) (determining that a claim whose “steps can be performed in the human mind, or by a human using a pen and paper” is directed to an unpatentable mental process). This is true even if the claim recites that a generic computer component performs the acts. *See, e.g., Versata Dev. Grp., Inc. v. SAP Am., Inc.*, 793 F.3d 1306, 1335 (Fed. Cir. 2015) (“Courts have examined claims that required the use of a computer and still found that the underlying, patent-ineligible invention could be performed via pen and paper or in a person’s mind.”); *see also* 2019 Guidance 52 n.14 (“If a claim, under its broadest reasonable interpretation, covers performance in the mind but for the recitation of generic computer components, then it is still in the mental processes category unless the claim cannot practically be performed in the mind.”).

For example, a player can play a lottery game based upon choosing a specific date from a calendar year by performing the steps of claims 1 and 38 as follows⁶: (a) mentally selecting a specific date of the calendar year (limitation [ii]); (b) manually writing (entering) the chosen date on a form (limitation [i]); (c) manually giving the completed form to a game operator (limitation [iii]); (d) manually receiving a printed ticket from the game operator that shows the chosen date (limitation [iv]); (e) mentally reading the winning dates (limitation [v]); (f) mentally comparing the winning date to the chosen date on the printed ticket (limitation [vi]); and (g) mentally determining the payout based on a pre-determined rule (limitation [vii]).⁷ As such, we do not agree with Appellant that the steps of claim 1 “cannot be performed in a human mind with the aid of pen and paper.” Reply Br. 3 (emphasis omitted)⁸; *see also Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016) (explaining that the Federal Circuit has “treated analyzing information by steps people go through in their minds . . . without more, as essentially mental processes within the abstract-idea category” and determining that the claims at issue involve such steps). As such, we have considered each of the specific limitations of independent claims 1 and 38, and each claim represents mere instructions that players can perform using their minds or pen and paper to play a lottery game.

⁶ We note that Appellant’s Specification describes a player selecting a specific date and a teller (game operator) manually marking and entering the chosen date (bet), manually generating (drawing) the winning date (bet), and selecting a payout rule. Spec. paras. 36–38, 43–44.

⁷ We note claim 38 includes similar limitations and, thus, the system of claim 39 can perform the recited steps. *See also* footnote 4.

⁸ Appellant’s Reply Brief, filed Oct. 6, 2018.

Appellant does not present any persuasive argument or evidence that the steps of claims 1 and 38 cannot be performed practically in the human mind using pen (or pencil) and paper.

Accordingly, for the foregoing reasons, because we determine that independent claims 1 and 38 recite a certain method of organizing human activity and a mental process that can be performed practically in the human mind using pen (or pencil) and paper, we conclude that claims 1 and 38 recite an abstract idea, and, thus, we proceed to Prong 2 of Step 2A.

Step 2A, Prong 2 – Integrated Into a Practical Application

If a claim recites a judicial exception, then, in *Prong 2*, we determine whether the recited judicial exception is integrated into a practical application of that exception by: (a) identifying whether there are any additional elements recited in the claim *beyond the judicial exception(s)*; and (b) evaluating those additional elements individually and in combination to determine whether they integrate the exception into a practical application. *See* 2019 Guidance 54–55. This evaluation requires an additional element or a combination of additional elements in the claim to apply, rely on, or use the judicial exception in a manner that imposes a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the exception. *See id.* at 54.

Appellant argues that “[t]he claims relate to a technological improvement in the field of lottery gaming” by “address[ing] the problem [of] allowing players to pick numbers based on dates they feel have significance to them.” Appeal Br. 9, 10 (citing Spec. para. 6). According to Appellant, “[t]he system allows for picking dates in various ways and to

include various bets, side bets and wagers, so as to reinvigorate the lottery and gaming industry.” *Id.* at 10. Appellant further asserts that claims 1 and 38 are patent-eligible under *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299 (Fed. Cir. 2016). *Id.* at 12.

We are not persuaded by Appellant’s contentions for the following reasons. In this case, the additional elements beyond the judicial exceptions identified above are a “remote bet input terminal” including “a user interface and a processor,” and a “central lottery computer system” including a “central processor.” *See* Appeal Br. 15, 18 (Claims App.). Appellant’s Specification makes clear that these elements are generic computing components, which do not invoke particular hardware or software and are described by their function. For example, as the “remote bet input terminal” has “the ability of sending and receiving data inputs to the central processing unit,” the recited “user interface” and “processor” of the “bet input terminal” are merely generic tools that perform the above noted function of transmitting and receiving data. *See* Spec. para. 44. In a similar manner, the “lottery central processor” of the “central lottery computer system” is described functionally as selecting the “[winning] criteria” and generating the winning dates (bets). *Id.* at para. 43. As such, the claims do not apply, rely on, or use these additionally recited elements in a manner that add meaningful limits to the recited steps. Instead, the reference to these generic input terminal and computer components are no more than mere instructions to apply the recited step by using these components. *See* MPEP § 2106.05(f)(2) (“Use of a computer or other machinery in its ordinary capacity for . . . tasks (e.g., to receive, store, or transmit data) . . . does not provide significantly more.”). In other words, although each of claims 1 and

38 are implemented using a computer and specific computer operations and structures, these specifics of the claimed invention find direct analogs in a manual implementation, as discussed *supra*. See *Trading Techs. Int'l, Inc. v. IBG LLC*, 921 F.3d 1084, 1090 (Fed. Cir. 2019) (“This invention makes the *trader* faster and more efficient, not the computer. This is not a technical solution to a technical problem.”).

Furthermore, in regards to the “technological improvement in the field of lottery gaming” that Appellant alludes to, we agree with the Examiner that because “the claims address the problem of allowing players to pick number based on dates,” the alleged improvement “is not a technical problem.” Ans. 8. At most, claims 1 and 38 improve a player’s lottery game experience, and, thus, the recited features are not problems that are unique or limited to computer environments. See Spec. para. 6 (“both lotteries and their service providers are presently searching for new forms of gaming.”). Hence, the Examiner is correct that “[t]he improvement is an improvement to an abstract idea” and “as the courts have said on a number of occasions, ‘a new abstract idea is still an abstract idea.’” Ans. 9 (citing *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (Fed. Cir. 2016) and *Interval Licensing LLC v. AOL, Inc.*, 896 F.3d 1335, 1345 (Fed. Cir. 2018)), 10; see also *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1163 (Fed. Cir. 2018) (“No matter how much of an advance in the finance field the claims recite, the advance lies entirely in the realm of abstract ideas, with no plausibly alleged innovation in the non-abstract application realm. An advance of than nature is ineligible for patenting.”). Therefore, the Examiner is correct that because “[t]he ‘improvement’ . . . is not to the technology of lotteries, but to the game itself,” “[n]o computer or system

runs faster, better, more securely or with greater ease of use because of Appellant's invention." Ans. 8–9.

We also do not agree with Appellant's reliance on *McRO*. See Appeal Br. 12. In contrast to *McRO*, Appellant does not identify specific rules that act in the same way as the specific rules enabling the computer in *McRO* to generate the result of a sequence of animated characters. *McRO*, 837 F.3d at 1313–16. In other words, we agree with the Examiner that here, we have none of the claimed specificity of technological improvement the Federal Circuit found present in the invention of *McRO*. See Ans. 9.

As such, for the foregoing reasons, the additional elements discussed *supra* use the ordinary capabilities of a computer to *automate* what can be done by a lottery game player and game operator. This is not enough to integrate the underlying abstract idea into a practical application, as “relying 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). In other words, the recited claims merely use computers in a routine fashion to implement the abstract process. See *Smart Sys. Innovations, LLC v. Chicago Transit Authority*, 873 F.3d 1364, 1372–73 (Fed. Cir. 2017)) (“The claims are not directed to a combined order of specific rules that improve any technological process, but rather invoke computers in the collection and arrangement of data. Claims with such character do not escape the abstract idea exception under *Alice* step one.”).

Accordingly, for the foregoing reasons, we determine that the recited “additional element[s] merely recite[] the words ‘apply it (or an equivalent) with the judicial exception, or merely includes instructions to

implement an abstract idea on a computer, or merely uses a computer as a tool to perform an abstract idea.” 2019 Guidance 55. Therefore, Appellant’s claims 1 and 38:

(1) do not improve the functioning of a computer or other technology;

(2) are not applied with any particular machine;

(3) do not affect a transformation of a particular article to a different state;

(4) do not add more than insignificant extra-solution activity; and

(5) are not applied in any meaningful way beyond generally linking the use of the judicial exception to a particular technological environment. *See* MPEP § 2106.05(a)–(c), (f), (g).

In conclusion, we are not persuaded of error in the Examiner’s determination that claims 1 and 38 are directed to an abstract idea, and we find that the claimed additional elements do not integrate the abstract idea into a practical application.

Step 2B – Well-Understood, Routine, Conventional Activity

Having determined that claims 1 and 38 recite a judicial exception, and do not integrate that exception into a practical application, under *Step 2B* we consider whether the claims add a specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field. *See* 2019 Guidance 56.

The Examiner finds that “[t]he claim(s) does/do not include additional elements that are sufficient to amount to significantly more than the judicial exception because the recited lottery terminal and central lottery computer are merely generic computers performing well-understood, routine and conventional data processing functions.” Non-Final Act. 2.

Appellant argues that claims 1 and 38 constitute “a technological improvement in the field of lottery gaming” because “a printed ticket and a remote bet input terminal is absolutely necessary for this invention to function,” and, thus, “is ‘significantly more’ than any abstract idea.” Appeal Br. 12–13. According to Appellant, the limitations of “inputting,” as per limitation [i], and “generating,” as per limitation [iv], are “wholly unconventional.” *Id.* at 11; Reply Br. 3. Appellant takes the position that the steps of generating a printed ticket, comparing the player’s selected date (bet) to the winning date, and sending a signal indicating that the ticket is a winning ticket are transformative steps that are *significantly more* than an abstract idea. *See* Reply Br. 4. In particular, Appellant asserts “that [c]laims 1 and 38 are not ‘well known’ as no prior art has been identified which discloses or suggest the claimed method and system.” Appeal Br. 6, 11, 14; Reply Br. 2. In addition, Appellant asserts that claims 1 and 38 are patent-eligible under *BASCOM Global Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016). Appeal Br. 11–12.

We are not persuaded that the Examiner erred in determining that the elements of claims 1 and 38, considered both individually and as an ordered combination, do not amount to significantly more than the abstract idea itself. Ans. 8. As discussed *supra*, the recited “remote bet input terminal” including “a user interface and a processor,” and “central lottery computer

system” including a “central processor,” are invoked as conventional tools. Apart from being used to perform the recited steps, these generic components only serve to perform well-understood functions (e.g., receiving, storing, analyzing, and outputting data), as per limitations [i] (“inputting”), [iii] (“transmitting”), [v] (“receiving”), and [vi] (“comparing” and sending a signal indicative of a winning ticket). *See FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1096 (Fed. Cir. 2016) (“[T]he use of generic computer elements like a microprocessor or user interface do not alone transform an otherwise abstract idea into patent-eligible subject matter.”). As such, because Appellant’s arguments do not establish that the claimed invention contains an arrangement of non-conventional elements that exist solely in a technical/computer field and solve a specific computer/technological problem, such as *BASCOM*’s filtering of Internet content, we are not persuaded by Appellant’s reliance on *BASCOM*. *See* Appeal Br. 11–12.

We are also not persuaded by Appellant’s contentions because the “technological improvement in the field of lottery gaming” that Appellant alludes to, namely, limitations [i] and [iv] of claim 1, in fact, recite a result without specifying a way of achieving the result. *See SAP Am.*, 898 F.3d at 1167 (Eligible “claims . . . transform[ed] a claim from one claiming only a result to one claiming a way of achieving it.”). Here, we agree with the Examiner that “[i]nputting lottery numbers into a terminal (which is a generic computer) is not unconventional. Neither is *printing* a lottery ticket,” as such steps “are performed in stores and gas stations all over the country every day and have been for decades.” Ans. 8–9 (emphasis added). Moreover, the steps of “inputting,” “printing,” and “send[ing] a signal . . .

identifying [the lottery ticket] as a winner” constitute extra-solution activity, which is insufficient to transform the claimed abstract idea into patent-eligible subject matter because it fails to impose meaningful limitations on the application of the abstract idea recited in the claims. *See* 2019 Guidance 55, n.31.

Furthermore, even though the Examiner has not identified prior art that discloses or suggests Appellant’s claimed invention, an abstract idea does not transform into an eligible inventive concept just because the Examiner has not found prior art that discloses or suggests it. Indeed, “[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.” *Diehr*, 450 U.S. at 188–89. A novel and non-obvious claim directed to a purely abstract idea is, nonetheless, patent-ineligible. *See Mayo*, 566 U.S. at 90–91.

Lastly, we are not persuaded by Appellant’s argument that “the Examiner has not indicated how [the recited] bet input terminal and central lottery computer are generic computers performing well-understood routine and conventional data processing functions.” Appeal Br. 13. “Relying on the specification alone may be appropriate where, as in *Mayo*, the specification *admits* as much.” *Berkheimer v. HP Inc.*, 890 F.3d 1369, 1371 (Fed. Cir. 2018). Here, as discussed *supra*, Appellant’s Specification makes clear that the recited “remote bet input terminal” including “a user interface and a processor,” and “central lottery computer system” including a “central processor,” are generic computing components, which do not invoke particular hardware or software and are merely described by well-understood functions (e.g., receiving, storing, analyzing, and outputting data).

Appellant does not show, with persuasive evidence, that these elements are more than generic components that are used as tools to perform the abstract ideas.

Accordingly, claims 1 and 38 fail to add a specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field, and, thus, fail to indicate the presence of an inventive concept. Therefore, we conclude that none of the limitations of claims 1 and 38, viewed “both individually and ‘as an ordered combination,’” amount to significantly more than the judicial exception in order to sufficiently transform the nature of the claims into patent-eligible subject matter. *See Alice*, 573 U.S. at 221.

In conclusion, for the foregoing reasons, we sustain the rejection of claims 1 and 38 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter.

As Appellant does not separately argue dependent claims 6–11, 34–37, 39, and 40, for the same reasons discussed above, we also sustain the rejection of these claims as being directed to patent-ineligible subject matter. *See* Appeal Br. 5–14.

DECISION SUMMARY:

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1, 6–11, 34–40	101	Eligibility	1, 6–11, 34–40	

Appeal 2019-000183
Application 14/467,006

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED