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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/684,270	11/23/2012	Ronen Lazar	P-78702-US	2591
49443	7590	09/16/2020	EXAMINER	
Pearl Cohen Zedek Latzer Baratz LLP			ZUKANOVICH, BRANDY A	
1500 Broadway			ART UNIT	
12th Floor			PAPER NUMBER	
New York, NY 10036			3684	
			NOTIFICATION DATE	
			DELIVERY MODE	
			09/16/2020	
			ELECTRONIC	

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RONEN LAZAR

Appeal 2019-000429
Application 13/684,270
Technology Center 3600

Before MURRIEL E. CRAWFORD, JOSEPH A. FISCHETTI, and
NINA L. MEDLOCK, *Administrative Patent Judges*.

MEDLOCK, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant¹ appeals under 35 U.S.C. § 134(a) from the Examiner’s rejection of claims 1 and 3–17. An oral hearing in this appeal was held July 1, 2020. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ We use the term “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Our decision references Appellant’s Appeal Brief (“Appeal Br.,” filed May 17, 2018) and Reply Brief (“Reply Br.,” filed October 23, 2018), and the Examiner’s Answer (“Ans.,” mailed August 23, 2018), and Non-Final Office Action (“Non-Final Act.,” mailed October 27, 2017). Appellant identifies Smart SKUs Inc. as the real party in interest (Appeal Br. 1).

CLAIMED INVENTION

The claimed invention “relates generally to the sale of products and services” and more specifically to

systems and methods for increasing the volume of sales transactions between a single vendor and one or more perspective buyers in a sales offering including one or more identical or substantially identical and/or comparable products or sets of products and/or services that are limited in quantity within a specified time period, for example through a website on the Internet

(Spec. ¶ 1).

Claims 1 and 16 are the independent claims on appeal. Claim 1, reproduced below with bracketed notations added, is illustrative of the claimed subject matter:

1. A computer-implemented method of providing a volume and revenue maximizing retail sales platform comprising the at least one of sequential, non-sequential, and sequence independent steps of:

[(a)] transmitting, by a network server, at least one sales offering of one or more comparable items associated with at least one vendor to a plurality of potential buyers;

[(b)] receiving, via the network server, at least one respective purchase offer, for at least one of the one or more comparable items, from each of a plurality of interested buyers during a sales offer period;

[(c)] determining, by an application computer processor, a first average purchase offer comprising an average of at least a portion of the plurality of purchase offers received from the network server;

[(d)] comparing, by the application computer processor, the first average purchase offer with at least one sales trigger price associated with the at least one vendor;

[(e)] when the first average purchase offer is within a predefined range associated with the at least one sales trigger price, and when a first predefined volume of purchase offers has been received:

executing, by the application computer processor, a sale to each interested buyer whose purchase offer was included in the determination of the first average purchase offer; and

[(f)] when the first average purchase offer is not within the predefined range associated with the at least one sales trigger price, and the first predefined volume of purchase offers has been received:

determining, by the application computer processor, a second average purchase offer comprising an average of the portion of the plurality of purchase offers considered in the determination of the first average purchase offer excluding at least one previously considered purchase offer;

comparing, by the application computer processor, the second average purchase offer with the at least one sales trigger price associated with the at least one vendor; and

executing, by the application computer processor, a sale to each interested buyer whose purchase offer was included in the determination of the second average purchase offer when the second average purchase offer is within the predefined range associated with the at least one sales trigger price.

REJECTIONS

Claims 1 and 3–17 are rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.

Claims 1, 3, and 5–17 are rejected under 35 U.S.C. § 103(a) as unpatentable over Growney et al. (US 2005/0187859 A1, published Aug. 25, 2005) (“Growney”) and Walker et al. (US 2002/0178071 A1, published Nov. 28, 2002) (“Walker”).

Claim 4 is rejected under 35 U.S.C. § 103(a) as unpatentable over Growney, Walker, and Boyd et al. (US 2004/0193489 A1, published Sept. 30, 2004) (“Boyd”).

ANALYSIS

Patent-Ineligible Subject Matter

Appellant argues the pending claims as a group (Appeal Br. 8–17). We select independent claim 1 as representative. The remaining claims stand or fall with claim 1. *See* 37 C.F.R. §41.37(c)(1)(iv).

Under 35 U.S.C. § 101, an invention is patent eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. The Supreme Court, however, has long interpreted § 101 to include an implicit exception: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014).

The Supreme Court, in *Alice*, reiterated the two-step framework previously set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012), “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice Corp.*, 573 U.S. at 217. The first step in that analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts.” *Id.* If the claims are not directed to a patent-ineligible concept, e.g., an abstract idea, the inquiry ends. Otherwise, the inquiry proceeds to the second step where the elements of the claims are considered “individually and ‘as an ordered combination’” to determine whether there are additional elements that “‘transform the nature of the claim’ into a patent-eligible application.” *Id.* (quoting *Mayo*,

566 U.S. at 79, 78). This is “a search for an ‘inventive concept’ — *i.e.*, an element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.’” *Id.* at 217–18 (alteration in original).

In rejecting the pending claims under 35 U.S.C. § 101, and treating claim 1 as representative, the Examiner determined that the claims are directed to auctioning items and, more specifically, to “executing a sale to each interested buyer,” *i.e.*, to a fundamental economic practice and, therefore, to an abstract idea substantially similar to other concepts that courts have held abstract (Non-Final Act. 4–6). The Examiner also determined that the claims do not include additional elements sufficient to amount to significantly more than the abstract idea itself (*id.* at 6–9).

After Appellant’s briefs were filed, and the Examiner’s Answer mailed, the U.S. Patent and Trademark Office (the “USPTO”) published revised guidance for use by USPTO personnel in evaluating subject matter eligibility under 35 U.S.C. § 101. 2019 REVISED PATENT SUBJECT MATTER ELIGIBILITY GUIDANCE, 84 Fed. Reg. 50, 57 (Jan. 7, 2019) (the “2019 Revised Guidance”). That guidance revised the USPTO’s examination procedure with respect to the first step of the *Mayo/Alice* framework by (1) “[p]roviding groupings of subject matter that [are] considered an abstract idea”; and (2) clarifying that a claim is not “directed to” a judicial exception if the judicial exception is integrated into a practical application of that exception. *Id.* at 50. The 2019 Revised Guidance, by its terms, applies to all

applications, and to all patents resulting from applications, filed before, on, or after January 7, 2019. *Id.*^{2,3}

Step One of the Mayo/Alice Framework (2019 Revised Guidance, Step 2A)

The first step in the *Mayo/Alice* framework, as mentioned above, is to determine whether the claims at issue are “directed to” a patent-ineligible concept, e.g., an abstract idea. *Alice Corp.*, 573 U.S. at 217. This first step, as set forth in the 2019 Revised Guidance (i.e., Step 2A), is a two-prong test; in Step 2A, Prong One, we look to whether the claim recites a judicial exception, e.g., one of the following three groupings of abstract ideas: (1) mathematical concepts; (2) certain methods of organizing human activity, e.g., fundamental economic principles or practices, commercial or legal interactions; and (3) mental processes. 2019 Revised Guidance, 84 Fed. Reg. at 54. If so, we next consider whether the claim includes additional elements, beyond the judicial exception, that “integrate the [judicial] exception into a practical application,” i.e., that apply, rely on, or use the judicial exception in a manner that imposes a meaningful limit on the

² The 2019 Revised Guidance supersedes MANUAL OF PATENT EXAMINING PROCEDURE (“MPEP”) § 2106.04(II) and also supersedes all versions of the USPTO’s “Eligibility Quick Reference Sheet Identifying Abstract Ideas.” See 2019 Revised Guidance, 84 Fed. Reg. at 51 (“Eligibility-related guidance issued prior to the Ninth Edition, R-08.2017, of the MPEP (published Jan. 2018) should not be relied upon.”). Accordingly, Appellant’s arguments challenging the sufficiency of the Examiner’s rejection will not be addressed to the extent those arguments are based on now superseded USPTO guidance.

³ The USPTO issued an update on October 17, 2019 (the “October 2019 Update: Subject Matter Eligibility,” available at https://www.uspto.gov/sites/default/files/documents/peg_oct_2019_update.pdf) clarifying the 2019 Revised Guidance in response to comments received from the public.

judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception (“Step 2A, Prong Two”). *Id.* at 54–55. Only if the claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application do we conclude that the claim is “directed to” the judicial exception, e.g., an abstract idea. *Id.*

We are not persuaded here that the Examiner erred in determining that claim 1 is directed to an abstract idea. The Federal Circuit has explained that “the ‘directed to’ inquiry applies a stage-one filter to claims, considered in light of the specification, based on whether ‘their character as a whole is directed to excluded subject matter.’” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016) (quoting *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015)). It asks whether the focus of the claims is on a specific improvement in relevant technology or on a process that itself qualifies as an “abstract idea” for which computers are invoked merely as a tool. *See id.* at 1335–36. Here, it is clear from the Specification (including the claim language) that claim 1 focuses on an abstract idea, and not on any improvement to technology and/or a technical field.

The Specification is titled “Systems and Methods of Providing a Volume and Revenue Maximizing Retail Sales Platform,” and describes, in the Background section, that retailing typically employs a vendor-controlled format whereby the vendor determines the non-negotiable fixed price at which the products and/or services are sold (Spec. ¶ 6). To avoid losing out on sales, where a retailer’s price is higher than the price being offered by a competitor, some retailers employ a price match policy whereby they match the price a competitor publishes for an identical product or service (*id.* ¶ 7).

Another sales format, known as the daily deal format, advertises discounted pricing, e.g., 50–90% off suggested retail pricing, based on a minimum volume of products or services purchased within a specified timeframe (*id.* ¶ 8). This sales format is conducive to selling a volume of products and services, but it does not maximize revenue; many vendors also view heavily discounted pricing as unsustainable and harmful to established product and service brands (*id.*).

Auctions are an additional way to negotiate price based on consumer demand (Spec. ¶ 9). And the Specification describes a number of different auction formats (*id.* ¶¶ 10–17). None of these auction formats, however, is “conducive to selling [a] volume of an identical or substantially identical product or service and maximize[s] revenue in a single offering” (*id.* ¶ 18). Therefore, according to the Specification, there is “currently” no system available for use by vendors to

produce a single offering that maximizes a volume of sales of a fixed number of identical or substantially identical units of a product or service and maximizes revenue based on all consumer interest in a product or service regardless of whether offers are submitted at varying price levels and whether a bid falls below a specified sales price

(*id.* ¶ 19).

The claimed invention is intended to address this shortcoming. Claim 1, thus, recites a computer-implemented method of providing a volume and revenue maximizing retail sales platform comprising:

(1) transmitting a vendor’s sales offering of one or more comparable items to a plurality of potential buyers, i.e., “transmitting, by a network server, at least one sales offering of one or more comparable items associated with at least one vendor to a plurality of potential buyers” (step (a)); (2) receiving

purchase orders from each of a plurality of interested buyers, i.e., “receiving, via the network server, at least one respective purchase offer, for at least one of the one or more comparable items, from each of a plurality of interested buyers during a sales offer period” (step (b)); (3) calculating a first average purchase offer⁴ and comparing the first average purchase order to a sales trigger price, which is the minimum price acceptable to the vendor, i.e.,

determining, by an application computer processor, a first average purchase offer comprising an average of at least a portion of the plurality of purchase offers received from the network server; [and]

comparing, by the application computer processor, the first average purchase offer with at least one sales trigger price associated with the at least one vendor

(steps (c) and (d)); (4) if the first average purchase order is within a predetermined range associated with the sales trigger price, and a first predetermined volume of purchase orders has been received, executing a sale to each buyer whose purchase offer was included in determining the first average purchase offer, i.e.,

when the first average purchase offer is within a predefined range associated with the at least one sales trigger price, and when a first predefined volume of purchase offers has been received:

executing, by the application computer processor, a sale to each interested buyer whose purchase offer was included in the determination of the first average purchase offer

(step (e)); and (5) if a first predetermined volume of purchase orders has been received but the first average purchase order is not within the

⁴ The Specification discloses a mathematical algorithm for calculating an average offer price (*see* Spec. ¶¶ 59–67).

predetermined range, calculating a second average purchase offer by excluding at least one previously considered purchase offer, comparing the second average purchase order to the sales trigger price, and executing a sale to each buyer whose purchase offer was included in determining the second average purchase offer when the second average purchase offer is within the predefined range, i.e.,

when the first average purchase offer is not within the predefined range associated with the at least one sales trigger price, and the first predefined volume of purchase offers has been received:

determining, by the application computer processor, a second average purchase offer comprising an average of the portion of the plurality of purchase offers considered in the determination of the first average purchase offer excluding at least one previously considered purchase offer;

comparing, by the application computer processor, the second average purchase offer with the at least one sales trigger price associated with the at least one vendor; and

executing, by the application computer processor, a sale to each interested buyer whose purchase offer was included in the determination of the second average purchase offer when the second average purchase offer is within the predefined range associated with the at least one sales trigger price

(step (f)). We agree with the Examiner that these limitations, when given their broadest reasonable interpretation, recite conducting an auction of items, which is a fundamental economic practice, i.e., one of certain methods of organizing human activity that are judicial exceptions and, therefore, an abstract idea. *See* 2019 Revised Guidance, 84 Fed. Reg. at 52. *See also Priceplay.com, Inc. v. AOL Advert., Inc.*, 83 F. Supp. 3d 577, 583 (D. Del. 2015) (“Auctions, competitive activities, and sales transactions are

all abstract ideas, and do not become non-abstract when combined and conducted over the Internet.”), *aff’d* mem., 627 F. App’x 925 (Fed. Cir. 2016); *Advanced Auctions LLC v. eBay Inc.*, No. 13CV1612 BEN (JLB), 2015 WL 1415265, at *4 (S.D. Cal. Mar. 27, 2015) (“Like hedging financial risk, intermediated settlement, or using advertising as currency, an auction is a ‘fundamental economic practice long prevalent in our system of commerce.’ *Alice Corp.*, [573 U.S. at 219].”).

Having concluded that claim 1 recites a judicial exception, i.e., an abstract idea (Step 2A, Prong One), we next consider whether the claim recites additional elements that integrate the judicial exception into a practical application (Step 2A, Prong Two).

The only additional elements recited in claim 1, beyond the abstract idea, are a “network server” and an “application computer processor” — elements that, as the Examiner observed, are generic computer components (Non-Final Act. 7), and disclosed as such in the written disclosure (*see, e.g.*, Spec. ¶¶ 75, 76, 85, 86, 109, 115, 119, 132). We find no indication in the Specification that the operations recited in claim 1 require any specialized computer hardware or other inventive computer components, i.e., a particular machine, invoke any allegedly inventive programming, or that the claimed invention is implemented using other than generic computer components to perform generic computer functions. *See DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014) (“[A]fter *Alice*, there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible.”).

We also find no indication in the Specification that the claimed invention effects a transformation or reduction of a particular article to a

different state or thing. Nor do we find anything of record, short of attorney argument, that attributes an improvement in technology and/or a technical field to the claimed invention or that otherwise indicates that the claimed invention integrates the abstract idea into a “practical application,” as that phrase is used in the 2019 Revised Guidance.⁵

Appellant argues that the § 101 rejection cannot be sustained because the claims are directed to an improvement in computer-related technology (Appeal Br. 8), i.e., an improvement in computer processing speed and memory availability (*id.* at 10). Appellant notes that typical legacy online auctions promote each item separately, determine a price for each item separately, and process each transaction separately; therefore, according to Appellant, “[i]n order to maximize volume, more transactions would be required, requiring more processing power and more memory storage” (*id.* at 9).

Appellant charges that these legacy systems also “cause *tremendous* amounts of computer processing power and memory to be *wasted*,” inasmuch as there may be multiple potential buyers vying for a few or only one product or service, requiring processing and storing of separate bids/offers, with the end result being that only one bid/offer is accepted (Appeal Br. 9 (“[W]hile in the end only the winning bid/offer actually

⁵ The 2019 Revised Guidance references MPEP § 2106.05(a)–(c) and (e) in describing the considerations that are indicative that an additional element or combination of elements integrates the judicial exception, e.g., the abstract idea, into a practical application. 2019 Revised Guidance, 84 Fed. Reg. at 55. If the recited judicial exception is integrated into a practical application, as determined under one or more of these MPEP sections, the claim is not “directed to” the judicial exception.

required processing and storing by computer, many non-winning bids are processed and stored, only to subsequently be rejected and discarded.”)). Appellant also charges that non-willing bidders “often enter new/revised bids on a second listing[,] which further tax[es] the processor and memory of the system unnecessarily” (*id.*).

Appellant argues that in contrast to these legacy systems, the claimed invention “provide[s] at least two clear improvements to the computer technology, particularly improving the computer processing speed and memory availability” (Appeal Br. 10). Appellant, thus, maintains that by aggregating bids/offers from multiple buyers, determining a first average purchase offer, and executing a sale for all the offers when the first average purchase offer is within a predefined range, the computer is enabled to process and store data for a larger volume of sales offers simultaneously “(1) without requiring executing each [offer] individually, dramatically decreasing required processing power; and (2) obviating the requirement for multiple listings (thus decreasing database memory and processing requirements significantly)” (*id.*). Appellant also maintains that by determining a second average purchase offer, which excludes at least one previously considered purchase offer, the computer is enabled to execute “the simultaneous sale for a plurality of bids/offers . . . without wasting all the processing and memory required for those bids/offers and without necessitating additional processing and memory for new/revised bids/offers” (*id.*).

The difficulty with Appellant’s arguments is that they, at best, establish that the claimed invention provides an improved method of auctioning items, i.e., an improved abstract idea, which is not enough for

patent eligibility. *See SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1170 (Fed. Cir. 2018) (“[P]atent law does not protect such claims[, i.e., claims to an asserted advance in the realm of abstract ideas], without more, no matter how groundbreaking the advance.”). As the Examiner observes, and we agree, although claim 1 may manifest some reduction in processing and memory storage, this reduction is “a *relative* reduction [based on the volume of orders to be processed] (i.e., [this procedure [requires] less offers [to be individually] executed [and stored] than another procedure for executing [and storing] offers), **rather than an improvement to the computing processes themselves in an effort reduce database memory and processing requirements**” (Ans. 7).

Contrary to Appellant’s assertion, we also find no parallel here between claim 1 and the patent-eligible claims in Example 3 of the USPTO’s “Examples: Abstract Ideas” (Appeal Br. 11 (arguing that “the present claims are analogous with respect to *their patent-eligibility* to the patent-eligible claims in Example 3 . . . provided in the ‘Abstract Idea Examples (January 27, 2015)’ issued by the Office”)).⁶

The claims in Example 3 are hypothetical claims modeled after the technology in *Research Corporation Technologies Inc. v. Microsoft Corp.*, 627 F.3d 859 (Fed. Cir. 2010), not actual claims at issue in that case. In *Research Corp.*, the Federal Circuit determined that the claims were patent eligible because the claimed invention presented “functional and palpable applications in the field of computer technology” and addressed “a need in

⁶ Available at https://www.uspto.gov/sites/default/files/documents/abstract_idea_examples.pdf, and referred to hereinafter as “Examples: Abstract Ideas.”

the art for a method of and apparatus for the halftone rendering of gray scale images in which a digital data processor is utilized in a simple and precise manner to accomplish the halftone rendering.” *Id.* at 868–69. Addressing hypothetical claim 1 in Example 3, the Office posits that claim 1,

when taken as a whole, does not simply describe the generation of a blue noise mask via a mathematical operation and receiving and storing data, but combines the steps of generating a blue noise mask with the steps for comparing the image to the blue noise mask and converting the resulting binary image array to a halftoned image.

Examples: Abstract Ideas 9. The Office determines that this goes “beyond the mere concept of simply retrieving and combining data using a computer,” and that the claimed process further improves the functioning of the computer itself in that it “allows the computer to use less memory, results in faster computation times without sacrificing the quality of resulting image as occurred in prior processes, and produces an improved digital image.” *Id.* The Office, thus, concludes that the hypothetical claim is an “an innovation in computer technology, namely digital image processing . . . [and] reflects both an improvement in the functioning of the computer and an improvement in another technology.” *Id.* We are not persuaded, for the reasons set forth above, that claim 1 provides a comparable improvement in computer functionality or an improvement in another technology.

We conclude, for the reasons outlined above, that claim 1 recites a method of organizing human activity, i.e., an abstract idea, and that the additional elements recited in the claim are no more than generic computer components used as tools to perform the recited abstract idea. As such, they do not integrate the abstract idea into a practical application. *See Alice Corp.*, 573 U.S. at 223–24 (“[W]holly generic computer implementation is

not generally the sort of ‘additional featur[e]’ that provides any ‘practical assurance that the process is more than a drafting effort designed to monopolize the [abstract idea] itself.’” (quoting *Mayo*, 566 U.S. at 77)). Accordingly, we agree with the Examiner that claim 1 is directed to an abstract idea.

Step Two of the Mayo/Alice Framework (2019 Revised Guidance, Step 2B)

Having determined under step one of the *Mayo/Alice* framework that claim 1 is directed to an abstract idea, we next consider under Step 2B of the 2019 Revised Guidance, the second step of the *Mayo/Alice* framework, whether claim 1 includes additional elements or a combination of elements that provides an “inventive concept,” i.e., whether the additional elements amount to “significantly more” than the judicial exception itself.

2019 Revised Guidance, 84 Fed. Reg. at 56.

Appellant argues that “[i]ndependent claim 1 includes additional limitations that amount to significantly more than an abstract idea of ‘auctioning items’” (Appeal Br. 15). But, that argument is not persuasive at least because the limitations that Appellant identifies as the inventive concept, i.e., steps (e) and (f) recited in claim 1, are part of the abstract idea; they are not additional elements to be considered when determining whether claim 1 includes additional elements or a combination of elements sufficient to amount to significantly more than the judicial exception.

It could not be clearer from *Alice*, that under step two of the *Mayo/Alice* framework, the elements of each claim are considered both individually and “as an ordered combination” to determine whether the additional elements, i.e., the elements *other* than the abstract idea itself, “transform the nature of the claim” into a patent-eligible application. *Alice*

Corp., 573 U.S. at 217 (internal quotations and citation omitted); *see Mayo*, 566 U.S. at 72–73 (requiring that “a process that focuses upon the use of a natural law also contain *other* elements or a combination of elements, sometimes referred to as an ‘inventive concept,’ sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the natural law itself” (emphasis added) (internal citation omitted)). In other words, the inventive concept under step two of the *Mayo/Alice* test cannot be the abstract idea itself:

It is clear from *Mayo* that the “inventive concept” cannot be the abstract idea itself, and *Berkheimer* . . . leave[s] untouched the numerous cases from this court which have held claims ineligible because the only alleged “inventive concept” is the abstract idea. *Berkheimer v. HP Inc.*, 890 F.3d 1369, 1374 (Fed. Cir. 2018) (Moore, J., concurring); *see also BSG Tech LLC v. BuySeasons, Inc.*, 899 F.3d 1281, 1290 (Fed. Cir. 2018) (“It has been clear since *Alice* that a claimed invention’s use of the ineligible concept to which it is directed cannot supply the inventive concept that renders the invention ‘significantly more’ than that ineligible concept.”) (internal citation omitted).

The Examiner determined here, and we agree, that the only claim elements beyond the abstract idea are a “network server” and an “application computer processor,” i.e., generic computer components used to perform generic computer functions (Non-Final Act. 7) — a determination amply supported by, and fully consistent with the Specification (*see, e.g.*, Spec. ¶¶ 75, 76, 85, 86, 109, 115, 119, 132). Appellant cannot reasonably contend that there is insufficient factual support for the Examiner’s determination that the operation of these components is well-understood, routine, or conventional, where, as here, there is nothing in the Specification to indicate

that the operations recited in claim 1 require any specialized hardware or inventive computer components or that the claimed invention is implemented using other than a generic computer component to perform generic computer functions, e.g., receiving, transmitting, and processing information. Indeed, the Federal Circuit, in accordance with *Alice*, has “repeatedly recognized the absence of a genuine dispute as to eligibility” where claims have been defended as involving an inventive concept based “merely on the idea of using existing computers or the Internet to carry out conventional processes, with no alteration of computer functionality.” *Berkheimer*, 890 F.3d at 1373 (Moore, J., concurring) (internal citations omitted); *see also BSG Tech*, 899 F.3d at 1291 (“BSG Tech does not argue that other, non-abstract features of the claimed inventions, alone or in combination, are not well-understood, routine and conventional database structures and activities. Accordingly, the district court did not err in determining that the asserted claims lack an inventive concept.”).

Appellant also misapprehends the controlling precedent to the extent Appellant maintains that claim 1 is patent eligible because the claim does not “preempt or tie up any alleged abstract idea” (Appeal Br. 16). Although the Supreme Court has described “the concern that drives [the exclusion of abstract ideas from patent-eligible subject matter] as one of pre-emption,” *Alice Corp.*, 573 U.S. at 216, characterizing preemption as a driving concern for patent eligibility is not the same as characterizing preemption as the sole test for patent eligibility. “The Supreme Court has made clear that the principle of preemption is the basis for the judicial exceptions to patentability” and “[f]or this reason, questions on preemption are inherent in and resolved by the § 101 analysis.” *Ariosa Diagnostics, Inc. v. Sequenom*,

Inc., 788 F.3d 1371, 1379 (Fed. Cir. 2015) (citing *Alice Corp.*, 573 U.S. at 216). “[P]reemption may signal patent ineligible subject matter, [but] the absence of complete preemption does not demonstrate patent eligibility.” *Id.*

We are not persuaded, on the present record, that the Examiner erred in rejecting independent claim 1 under 35 U.S.C. § 101. Therefore, we sustain the Examiner’s rejection of claim 1, and claims 3–17, which fall with claim 1.

Obviousness

Independent Claims 1 and 16 and Dependent Claims 3, 5–15, and 17

We are persuaded by Appellant’s argument that the Examiner erred in rejecting independent claims 1 and 16 under 35 U.S.C. § 103(a) at least because neither Growney nor Walker, individually or in combination, discloses or suggests checking whether “a first predefined volume of purchase offers has been received,” as called for in steps (e) and (f) of claim 1, and similarly called for in claim 16 (Appeal Br. 4–6).

The Examiner acknowledges that Growney does not disclose the argued feature, and cites paragraphs 278 and 279 of Walker to cure this deficiency (Final Act. 10–13). However, we agree with Appellant that although Walker discloses executing a sale of an individual item if the offer price reaches or exceeds a trigger price, and executing a batch sale of multiple items if the average offer price reaches or exceeds the trigger price, we find nothing in the cited portion of Walker that discloses or suggests that the sale is conditioned on whether a predefined volume of purchase offers has been received (Appeal Br. 5).

Responding to Appellant’s argument, the Examiner asserts in the Answer that “a broad, reasonable interpretation of ‘a first predetermined

volume of purchase offers has been received’ includes a batch process of received offers (as shown in Walker)” (Ans. 4). But, as Appellant observes, Walker discloses determining an average price for a batch process of orders and comparing the average price to a price threshold, which is not the same as comparing the volume of purchase offers to a volume threshold, as called for in independent claims 1 and 16 (Reply Br. 1).

In view of the foregoing, we do not sustain the Examiner’s rejection of independent claims 1 and 16 under 35 U.S.C. § 103(a). For the same reasons, we also do not sustain the rejection of dependent claims 3, 5–15, and 17. *Cf. In re Fritch*, 972 F.2d 1260, 1266 (Fed. Cir. 1992) (“dependent claims are nonobvious if the independent claims from which they depend are nonobvious”).

Dependent Claim 4

Claim 4 depends from independent claim 1. The rejection of claim 4 does not cure the deficiency in the Examiner’s rejection of claim 1. Therefore, we do not sustain the Examiner’s rejection of dependent claim 4 for the same reasons set forth above with respect to independent claim 1.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1, 3–17	101	Eligibility	1, 3–17	
1, 3, 5–17	103(a)	Growney, Walker		1, 3, 5–17
4	103(a)	Growney, Walker, Boyd		4

Appeal 2019-000429
Application 13/684,270

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
Overall Outcome			1, 3–17	

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