



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/189,880	02/25/2014	Paul Aaron	SQ-0112-US1-CIP2	9818
151231	7590	06/30/2020	EXAMINER	
Schott P.C. 610 Old York Road, Suite 400 Jenkintown, PA 19046			BRINDLEY, BENJAMIN S	
			ART UNIT	PAPER NUMBER
			3697	
			NOTIFICATION DATE	DELIVERY MODE
			06/30/2020	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

eofficeaction@appcoll.com
patents@schottpc.com
square@clairvolex.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte PAUL AARON and ANDREW BOROVSKY

Appeal 2019-000584
Application 14/189,880
Technology Center 3600

Before ALLEN R. MACDONALD, DEBRA K. STEPHENS, and
BRADLEY W. BAUMEISTER, *Administrative Patent Judges*.

STEPHENS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 1–6, 8, 9, 12, 13, 15–23, and 25 (*see* Final Act. 1).² We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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

² Claims 7, 10, 11, 14, 24, and 26 have been cancelled (Final Act. 2).

CLAIMED SUBJECT MATTER

The claims are directed to a displaying accounts associated with a proxy card to enable a selection (Abstract).

REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Dwight	US 2012/0166311 A1	June 28, 2012
Casey	US 8,459,544 B2	June 11, 2013
Laracey	US 2013/0246203 A1	Sept. 19, 2013
Chatterjee	US 8,577,803 B2	Nov. 5, 2013

REJECTIONS

Claims 1–6, 8, 9, 12, 13, 15–23, and 25 are rejected under 35 U.S.C. § 101 as being directed to a judicial exception to patent-eligible subject matter without reciting significantly more (Final Act. 3–6).

Claims 1–6 and 8 stand rejected under 35 U.S.C. § 103 as being unpatentable over Chatterjee, Laracey, and Dwight (*id.* at 6–13).

Claims 9, 12, 13, 16–19, and 21 stand rejected under 35 U.S.C. § 103 over Chatterjee, Dwight, and Casey (*id.* at 13–21).

Claims 15, 20, 22, 23, and 25 stand rejected under 35 U.S.C. § 103 as being unpatentable over Chatterjee, Dwight, Casey, and Laracey (*id.* at 23–28).

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

OPINION

35 U.S.C. § 101: CLAIMS 1 – 6, 8, 9, 12, 13, 15 – 23, AND 25

Contentions

Appellant argues their invention as recited in claims 1 – 6, 8, 9, 12, 13, 15 – 23, and 25 is directed to patent eligible subject matter (Appeal Br. 22).

Principles of Law

An invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter” (35 U.S.C. § 101). However, the Supreme Court has long interpreted 35 U.S.C. § 101 to include implicit exceptions: “[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)).

In determining whether a claim falls within an excluded category, we are guided by the Supreme Court’s two-step framework, described in *Mayo* and *Alice* (*id.* at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–77 (2012))). In accordance with that framework, we first determine what concept the claim is “directed to” (*see 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, 69 (1972)). Concepts determined to be patent-eligible include physical and chemical processes, such as “molding rubber products” (*Diamond v. Diehr*, 450 U.S. 175, 192 (1981)); “tanning, dyeing, making waterproof cloth, vulcanizing India rubber, smelting ores” (*id.* at 184 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))).

In *Diehr*, the claim at issue recited a mathematical formula, but the Supreme Court held that “[a] claim drawn to subject matter otherwise statutory does not become nonstatutory simply because it uses a mathematical formula” (*Diehr*, 450 U.S. at 176; *see also id.* at 191 (“We view respondents’ claims as nothing more than a process for molding rubber products and not as an attempt to patent a mathematical formula”). Having said that, the Supreme Court also indicated that a claim “seeking patent protection for that formula in the abstract . . . is not accorded the protection of our patent laws, . . . and this principle cannot be circumvented by attempting to limit the use of the formula to a particular technological environment” (*id.* (citing *Benson* and *Flook*); *see, e.g., id.* at 187 (“It is now commonplace that an application of a law of nature or mathematical formula to a known structure or process may well be deserving of patent protection.”))).

If the claim is “directed to” an abstract idea, we turn to the second step of the *Alice* and *Mayo* framework, where “we must examine the elements of the claim to determine whether it contains an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-

eligible application” (*Alice*, 573 U.S. at 221 (quotation marks omitted)). “A claim that recites an abstract idea must include ‘additional features’ to ensure ‘that the [claim] is more than a drafting effort designed to monopolize the [abstract idea]’” (*id.* (quoting *Mayo*, 566 U.S. at 77)). “[M]erely requir[ing] generic computer implementation[] fail[s] to transform that abstract idea into a patent-eligible invention” (*id.*).

USPTO 2019 Revised Section 101 Guidance

In January 2019, the USPTO published revised guidance on the application of § 101 (*see* 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019 (“2019 Guidance”))).³ “All USPTO personnel are, as a matter of internal agency management, expected to follow the guidance” (*id.* at 51); *see also* October 2019 Update at 1).

Under the 2019 Guidance and the October 2019 Update, 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) (“Step 2A, Prong One”); and

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

(2) additional elements that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h) (9th ed. Rev. 08.2017, Jan. 2018)) (“Step 2A, Prong Two”).⁴ (2019 Revised Guidance, 84 Fed. Reg. at 52–55).

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, do we then look, under 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, and conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception (2019 Revised Guidance, 84 Fed. Reg. at 52–56).

Analysis

Appellant argues all pending claims as a group (*see* Appeal Br. 15). Accordingly, we address all pending claims as a group and select independent claim 1 as representative of the claimed subject matter (*see* 37 C.F.R. § 41.37(c)(1)(iv)).

⁴ This evaluation is performed by (a) identifying whether there are any additional elements recited in the claim beyond the judicial exception, and (b) evaluating those additional elements individually and in combination to determine whether the claim as a whole integrates the exception into a practical application (*see* 2019 Revised Guidance - Section III(A)(2), 84 Fed. Reg. 54–55).

STEP 1

Section 101 provides that “[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). We determine that independent claims 1, 9, and 16 recite a method and independent claim 22 recites a system. As such, the claims are directed to statutory classes of invention within 35 U.S.C. § 101, i.e., processes and machines.

STEP 2A, Prong 1

Under Step 2A, Prong 1, of the Guidance, we must determine whether the claims, being directed to statutory classes of invention, nonetheless fall within a judicial exception. More specifically, we first look to whether the claim recites any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human activities such as a fundamental economic practice, or mental processes) (84 Fed. Reg. at 52–54).

We agree with the Examiner that the claims recite “financial transactions, transaction account details, and managing business relations relative to accounts which is a fundamental economic practice” (Ans. 4). We conclude the claims recite the abstract idea of a commercial interaction, namely sales activities, which are categorized as certain methods of organizing human activity, because the claims recite “receiving . . . transaction information associated with a purchase transaction between a merchant and a consumer that involves a payment” (*See* 2019 Guidance,

84 Fed. Reg. at 52). We further conclude the claims also recite the abstract idea of mitigating risk, as admitted by Appellant (Reply Br. 4). As stated in the 2019 Guidance, mitigating risk is a method of organizing human activity.

An inspection of the claims supports the Examiner's determination. More specifically, representative claim 1 reads as follows with emphasis added to indicate the portions of the claim that recite abstract ideas:

[a] *receiving, from a point-of-sale (POS) system and by a computer system, transaction information associated with a purchase transaction between a merchant and a consumer that involves a payment,*

the purchase transaction involving a reading of a payment card by a card reader associated with the POS system,

the payment card being associated with a plurality of payment accounts,

the payment accounts each being associated with one of a credit card, a debit card, an automated teller machine (ATM) card, or a stored value card;

[b] *receiving, from the POS system and by the computer system, payment card information obtained from the payment card by the card reader;*

[c] *based on the payment card information, accessing, by the computer system, a database to identify the payment accounts associated with the payment card and to identify a mobile device associated with the payment card;*

[d] *selecting, by the computer system, a first payment account of the plurality of payment accounts to use to obtain an authorization for the payment, the authorization being indicative that the first payment account has sufficient funds available for use for the payment;*

[e] *sending a message, by the computer system, that triggers a process that causes the authorization, from a first funding source that authorizes payments based on the first payment account, to be sent to the POS system, the authorization including information that prompts the POS system to generate,*

for delivery to the consumer, a purchase receipt for the purchase transaction;

[f] after the purchase receipt is generated, and prior to the merchant receiving any funds for the payment, sending, by the computer system, a message for delivery to the mobile device to prompt the mobile device to display a user interface that indicates a subset of the plurality of payment accounts associated with the payment card, enabling the consumer to specify a second payment account of the subset of the payment accounts to use for the purchase transaction; and

[g] selecting, by the computer system, the second payment account to use for the purchase transaction in response to a message from the mobile device indicating to use the second payment account for the purchase transaction,

wherein the selecting of the second payment account initiates a process that prevents the payment to the merchant from being processed by the first funding source such that no funds for the payment to the merchant are obtained from the first payment account.

(bracketed letters added).

The limitations of claim 1 recite a “commercial interaction,” i.e., certain methods of organizing human activity, in the financial industry (Ans. 4). The claim recites initiating a purchase — “receiving . . . transaction information associated with a purchase transaction . . . involving a reading of a payment card”; “receiving . . . payment card information obtained from the payment card”; “based on the payment card information, . . . identify[ing] the payment accounts . . . and [an associated] mobile device”; and “selecting . . . a first payment account . . . to use to obtain authorization for the payment” (limitations [a], [b], [c], [d]). The claim further recites subsequently completing the purchase of a good or service using a payment card transaction sent to a payment service system (i.e., the claimed “computer system”) — “sending a message . . . that . . . authorizes

payments . . . from a first funding source . . . [and] generat[ing] . . . a purchase receipt” and “selecting . . . the second payment account to use for the purchase transaction in response to [the user’s message]” (steps [e] and [g]).

Restated, claim 1 recites initiating and subsequently completing a payment by transmitting payment source information and transaction data associated with the purchase for delivery to a payment processor. Such steps are a fundamental aspect of purchasing a good or service (e.g., a credit card transaction). Thus, these steps recite commercial interactions (i.e., sales activities). The 2019 Guidance recognizes sales activities and commercial transactions as certain methods of organizing human activity that constitute a patent-ineligible abstract idea (84 Fed. Reg. at 52).

Limitation [f] recites the following step:

after the purchase receipt is generated, and prior to the merchant receiving any funds for the payment, sending . . . a message for delivery to the mobile device to prompt the mobile device to display a user interface that indicates a subset of the plurality of payment accounts associated with the payment card, enabling the consumer to specify a second payment account of the subset of the payment accounts to use for the purchase transaction.

This step recites the fundamental and well-known practice of sending a communication to prompt the display device to display a user interface indicating payment accounts and enabling the consumer to specify a second payment account. We note that this limitation does *not* recite sending a message to a mobile device. Rather, it more broadly recites “sending . . . a message *for delivery to the mobile device to prompt the mobile device to display a user interface.*” As such, the language is broad enough to read on sending a message to any entity, including a human, and the further

italicized language merely explains the intended reason for sending the message. Therefore, this step also recites a commercial interaction (i.e., sales activities).

To summarize, claim 1 recites a commercial interaction, and more specifically, a type of sales activity, which is identified as a certain method of organizing human activity according to the 2019 Guidance (84 Fed. Reg. at 52). Additionally, selecting one payment source of a plurality of available payment sources based on a buyer's preference is a long-standing economic practice, which also falls under the recognized category of a commercial interaction. Therefore, we determine claim 1 recites an abstract idea.

STEP 2A Prong 2

Next, we determine whether the claims are directed to the abstract concept itself or whether the claims are instead directed to some technological implementation or application of, or improvement to, the recited concept, i.e., integrated into a practical application (*see, e.g., Alice*, 573 U.S. at 223, discussing *Diehr*, 450 U.S. at 175).

Under step 2A, prong 2, of the 2019 Guidance, we next analyze whether claim 1 recites additional elements that individually or in combination integrate the judicial exception into a practical application (2019 Guidance, 84 Fed. Reg. at 53–55). The 2019 Guidance provides exemplary considerations that are indicative of an additional element or combination of elements integrating the judicial exception into a practical application, such as an additional element reflecting an improvement in the functioning of a computer or an improvement to other technology or technical field (*id.* at 55; MPEP § 2106.05(a)).

Appellant argues the invention, as recited in independent claim 1, “is directed to more than just ‘transmitting information to undertake a financial transaction, managing business relations relative to accounts, identifying charges and details of transactions, account settlement, monitoring and reporting, and using categories to organize, store and transmit information’ as stated in the Final Office Action” (Appeal Br. 22). Contrary to Appellant’s argument, however, the Examiner properly inspected the claims and determined

the claim does not effect an improvement to another technology or technical field; the claim does not amount to an improvement to the functioning of a computer itself; and the claim does not move beyond a general link of the use of an abstract idea to a particular technological environment.

(Final Act. 4).

More specifically, Appellant argues independent claim 1 “improve[s] computer-related technology to overcome problems specifically arising in the realm of remote electronic transactions” (Appeal Br. 23). We are not persuaded, however; rather, we agree with the Examiner’s determinations that “neither the claims nor the specification identifies elements beyond generic computer components performing generic computer functions” (Ans. 4). As the Examiner determines, “the instant claims provide a generically computer-implemented solution to a business-related or economic problem” (Ans. 5).

The focus of claim 1 is not on such an improvement in computers as tools, but on certain independently abstract ideas that use computers as tools, with claim 1 neither effecting an improvement to another technology or technical field, nor amounting to an improvement to the functioning of the computer itself (Ans. 5). Appellant’s Specification discloses “a technique

for displaying accounts . . . , to enable a consumer to select a financial account to use for a financial transaction” (Spec. ¶ 18). Consistent with the Specification, claim 1 recites mere instructions to implement the abstract idea on a computer (i.e., the claimed “mobile device”), and further, merely use a computer as a tool to perform the abstract idea (84 Fed. Reg. at 55; MPEP § 2106.05(f)).

Appellant also argues “the present claims involve near instantaneous communications involving multiple devices for time-sensitive transactions involving a proxy object that is tied to multiple accounts—a problem that only exists in remote electronic transactions over computer networks and that has no ‘bricks and mortar’ analogue” (Appeal Br. 23). Appellant’s contentions are unpersuasive. Claim 1 is not limited to any specific type of *technology* for network-based financial transactions. Rather, Appellant’s Specification indicates that the claimed steps can be performed on a variety of generic and commercially available computing devices: “[c]onnector 390 represents an information flow made via any type of communications medium, such as a network (wired or wireless)” (Spec. ¶ 72).

Our reviewing court has held that “merely limiting the field of use of the abstract idea to a particular . . . environment does not render the claims any less abstract” (*Affinity Labs of Tex., LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1259 (Fed. Cir. 2016)). Therefore, contrary to Appellant’s argument, although the solution uses technology—e.g., software and networks are used in order to expedite and simplify transaction processing between a merchant and consumer—there is no improvement to the *computer* or the *technology*, itself.

The October 2019 Patent Eligibility Guidance Update states with regards to the Step 2A, Prong 2, analysis that Examiners should “analyze the ‘improvements’ consideration by evaluating the specification and the claims to ensure that a *technical explanation* of the asserted improvement is present in the specification, and that the claim reflects the asserted improvement” (October 2019 Update).

Appellant’s Specification does not contain a technical explanation of the asserted improvements of “computer-related technology to overcome problems specifically arising in the realm of remote electronic transactions” (*see* Appeal Br. 23). Rather, the Specification merely describes general communications that occur between the POS system, the computer system, and the consumer’s mobile device.

For example, the process of transmitting the transaction information is described merely as follows: “card reader 155 transmits information obtained from proxy card 150 to POS system 158, a point-of-sales (POS) system to which card reader 155 is coupled (either directly or indirectly)” (Spec ¶ 33) and “POS system 158 further transmits information associated with the purchase transaction, referred to herein as the transaction information, to financial system 160” (Spec ¶ 35).

Other portions of the Specification and accompanying figures similarly describe generally how the communications occur between the various entities. However, nowhere in the Specification is there provided any sufficiently *technical explanation* of the asserted improvements to the technology. Nor are the elements themselves described as providing any sufficiently technical explanation of asserted improvements to the technology (*see, e.g.*, “[c]onsumers today user many types of payment cards

(e.g., credit cards, debit cards, prepaid gift cards and other payment objects (e.g., a smart phone with a digital wallet) to make purchases” (Spec. ¶ 2); “a VISA branded payment card” (*id.* ¶ 70); “the term ‘card reader’ herein refers to any object that can be used to obtain information from an object used to make an electronic payment where the card reader must be in the general vicinity of the object, such as an optical scanner, a near field communications device, a Bluetooth communications device, etc.” (*id.* ¶ 21); “[f]inancial system 160 receives the transmitted information, and based on this information, decides to relay the transmitted information to computer system 170 for further processing” (*id.* ¶ 45)). The Specification does not provide technical details of any of these elements (*see generally* Specification).

Accordingly, Appellant does not sufficiently demonstrate that claim 1 integrates the judicial exception into a practical application (*see* 2019 Revised Guidance, Section III(A)(2) (Prong Two: If the Claim Recites a Judicial Exception, Evaluate Whether the Judicial Exception Is Integrated Into a Practical Application)) (84 Fed. Reg. at 54–55). We, therefore, agree with the Examiner that claim 1 is directed to a judicial exception—i.e., an abstract idea—without reciting significantly more so as to integrate the abstract idea into a practical application.

STEP 2B

Next, we determine whether claim 1 includes additional elements that provide significantly more than the recited judicial exception, thereby providing an inventive concept (*Alice*, 573 U.S. at 218–219 (quoting *Mayo*, 566 U.S. at 72–73)). Under the 2019 Guidance, we determine whether

claim 1 (a) adds a specific limitation or combination of limitations that are not well-understood, routine, conventional activity in the field, or (b) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception (84 Fed. Reg. at 56).

Considered individually or taken together as an ordered combination, the additional claim elements fail “to ‘transform’ the claimed abstract idea into a patent-eligible application” (*Alice*, 573 U.S. at 221 (quoting *Mayo*, 132 S. Ct. at 1294, 1298)). Beyond the abstract idea, the additional claims merely recite “well-understood, routine conventional activit[ies],” either by requiring conventional computer activities or routine data-gathering steps (*Alice*, 573 U.S. at 225 (quoting *Mayo*, 132 S. Ct. at 1294) (alterations in original)). Indeed, we agree with the Examiner that the claims do not recite significantly more than the abstract idea itself because the “focus of the instant claims is not on such an improvement in computers as tools, but on certain independently abstract ideas that use computers as tools” (Ans. 5). We further agree “the computer components at each step of the management process perform purely generic computer functions” (Final Act. 4).

Appellant argues the claims “provide[] a technology-based solution to the problem of insufficient fund transactions in a manner that is more than occurs at a conventional payment terminal alone” (Appeal Br. 29) and “[t]he Final Office Action fails to consider these interactions, and instead considers the claimed operations only in isolation” (Appeal Br. 30).

We are not persuaded. Neither the individual features of claim 1 themselves nor the combination of elements are anything other than well-

understood, routine, or conventional activities. According to the *Berkheimer* Memorandum,

[a] specification demonstrates the well-understood, routine, conventional nature of additional elements when it describes the additional elements as well-understood or routine or conventional (or an equivalent term), as a commercially available product, or 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).

(Robert W. Bahr, *Memorandum of Changes in Examination Procedure Pertaining to Subject Matter Eligibility, Recent Subject Matter Eligibility Decision (Berkheimer v. HP, Inc.)*, 1, 3, (April 19, 2018), emphasis added).

The additional elements described in claim 1 are “well-understood, routine, and conventional” within the meaning of step 2B of the 2019 Guidance. For example, Appellant’s Specification describes a point-of-sale (POS) system without sufficiently specific details (*see, e.g.*, Spec. ¶¶ 19, 23, 28, 148). The description of the elements of Figure 9 discloses elements well-understood, routine, and conventional (e.g., one or more processors 910, memory 911, a communication device 912, and one or more input/output (I/O) devices 913) (Spec. ¶ 149).

Moreover, the “payment card” recited in claim 1, is read by a card reader. However, Appellant indicates that a payment card containing the ability to be read by a card reader (e.g., by a magnetic stripe or computer chip) was well-understood, routine, and conventional (*see id.* ¶ 33). Indeed, examples of payment cards are described as “credit cards, debit cards, [and] prepaid gift cards” (*id.* ¶ 2) and examples of a “card reader” are described as “an optical scanner, a near field communications device, a Bluetooth communications device, etc.” (*id.* ¶ 33). “Mobile device,” also recited in the

claims, is described in the Specification as including “smart phones, tablets. Portable media devices, wearable devices, laptops, and other portable computers” (*id.* ¶ 59). Finally, claim 1 broadly recites a “computer system” (Appeal Brief, claim 1).

None of the details of any of these recited elements are described in the Specification as anything other than what is well-understood, routine, and conventional (*see generally* Spec.). “When claims . . . are ‘directed to an abstract idea’ and ‘merely requir[e] generic computer implementation,’ they ‘do[] not move into section 101 eligibility territory’” (*buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1354 (Fed. Cir. 2014)).

Thus, we are unable discern any additional elements in claim 1, even when the recitations are considered in combination, that represent significantly more than the performance of routine, conventional functions of a generic computer. That is, claim 1 does not require any nonconventional computer components, or even a “non-conventional and non-generic arrangement of known, conventional pieces.”; rather, claim 1 merely calls for performance of the claimed receiving of information, identifying accounts based on the information, communicating the information, and selecting the account to pay with “on a set of generic computer components” (*Bascom Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1350 (Fed. Cir. 2016)). Accordingly, we conclude claim 1 fails to recite additional elements that amount to significantly more than the judicial exception.

Appellant additionally argues that the claims “do not attempt to tie up the identified Abstract Idea so other cannot practice it” (Appeal Br. 23). This argument is unpersuasive because the claims are directed to patent-

eligible subject matter. Although preemption is characterized as a driving concern for patent eligibility, preemption itself is not the test for patent eligibility. Rather, “[w]hile preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility” (*Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015); *see also OIP*, 788 F.3d at 1362–63 (Fed. Cir. 2015) (“[T]hat the claims do not preempt all price optimization or may be limited to price optimization in the e-commerce setting do not make them any less abstract”)).

Accordingly, Appellant does not persuade us the Examiner errs in concluding independent claim 1 and commensurately recited independent claims 9, 16, and 22 are directed to an exception to patent-eligible subject matter without reciting significantly more. Appellant does not separately argue the dependent claims (Spec. 33). Thus, Appellant does not establish the Examiner erred in determining claims 1–6, 8, 9, 12, 13, 15–23, and 25 are directed to an exception to patent-eligible subject matter without reciting significantly more. Therefore, we sustain the Examiner’s rejection of claims 1–6, 8, 9, 12, 13, 15–23, and 25 under 35 U.S.C. § 101.

35 U.S.C. § 103: CLAIMS 1–6, 8, 9, 12, 13, 15–23, AND 25

Contentions

Appellant contends their invention, as recited in claims 1 – 6, 8, 9, 12, 13, 15 – 23 and 25, is not obvious over various combinations of Chatterjee, Laracey, Dwight, and Casey (Appeal Br. 13). The issues presented by the arguments are whether the combination of Chatterjee, Laracey, and Dwight teaches or suggests: (1) “after the purchase receipt is generated, and prior to

the merchant receiving any funds for the payment” and (2) “wherein the selecting of the second payment account initiates a process that prevents the payment to the merchant from being processed by the first funding source such that no funds for the payment to the merchant are obtained from the first payment account,” as recited in claim 1 and as commensurately recited in independent claims 9, 16, and 22.

Claim 1

“after the purchase receipt is generated, and prior to the merchant receiving funds for the payment”

Appellant argues “Dwight fails to disclose performing any actions after the purchase receipt is generated, and prior to the merchant receiving any funds for the payment” (Appeal Br. 16 (emphases omitted)). According to Appellant, “in Dwight the user is only provided the ability to make these changes after the merchant receives funds for the payment, not prior to the merchant receiving any funds for the payment” (*id.* at 17 (emphases omitted)).

Dwight teaches “[i]f the initial funding source is X and the payment request is approved with X, the user may still be able to change the funding source to Y after the purchase has been completed” (Dwight ¶ 12). Importantly, Dwight teaches “[e]xamples for payment options (before, *at*, or after purchase) may include *holding off payment until a certain time period after the transaction*” (*id.* ¶ 27) (emphasis added). Dwight further teaches “[a]fter the checkout process is ended, the user may decide at some point to *change the payment selections made during the checkout*” (*id.* ¶ 36)

(emphasis added). Dwight clarifies that the “change” can be in the form of a different payment source (*id.* ¶ 53).

Thus, Dwight teaches a user may hold off payment until a certain time period after the transaction, and then change the payment selection to pay before or at the certain time period. Therefore, based on these portions of Dwight, and on the reference as a whole, we agree with the Examiner that Dwight teaches that a consumer is able to change their payment source “prior to the merchant receiving funds for the payment,” as claimed.

“wherein the selecting of the second payment account initiates a process that prevents the payment to the merchant from being processed by the first funding source such that no funds for the payment to the merchant are obtained from the first payment account”

Similar to the previously-argued feature, Appellant argues “Dwight fails to disclose a process that prevents the payment to the merchant from being processed by the first funding source such that no funds for the payment to the merchant are obtained from the first payment account” (Appeal Br. 19). This argument is unpersuasive, as well.

As stated above, Dwight teaches a user is able to defer payments for a purchase for a certain period of time (Dwight ¶ 27). Dwight further teaches the user may change the payment source they used at checkout (Dwight ¶¶ 36, 53). We agree with the Examiner that Dwight teaches the claimed process of preventing payment to the merchant from being processed by the first funding source such that no funds for the payment to the merchant are obtained from the first payment account; the payment is made by the selected second payment source in Dwight. Thus, Appellant has not

persuaded us the combination of Chatterjee, Laracey, and Dwight fails to teach “wherein the selecting of the second payment account initiates a process that *prevents the payment to the merchant from being processed by the first funding source such that no funds for the payment to the merchant are obtained from the first payment account,*” as recited in claim 1.

Accordingly, we are not persuaded the Examiner erred in finding the combination of Chatterjee, Laracey, and Dwight teaches or suggests the disputed limitations, as recited in claim 1. Therefore, we sustain the rejection of claim 1 under 35 U.S.C. § 103 for obviousness over Chatterjee, Laracey, and Dwight.

Claims 9, 16, and 22

Claims 9, 16, and 22 are commensurately recited to claim 1. For the reasons set forth above, we are not persuaded the Examiner erred in finding the combination of Chatterjee, Laracey, and Dwight teaches or suggests the limitations as recited in claims 9, 16, and 22. Therefore, we sustain the rejection of claims 9, 16, and 22 under 35 U.S.C. § 103 for obviousness over Chatterjee, Laracey, and Dwight, for the same reason as discussed above with regard to claim 1.

Claims 2–6, 8, 9, 12, 13, 15–23, and 25

Claims 2 – 6, 8, 9, 12, 13, 15 – 23, and 25 depend from independent claims 1, 9, 16, and 22, respectively. Appellant does not separately argue these claims (*see generally* Appeal Br.). Therefore, the rejections of these claims stand with their respective independent claims.

CONCLUSION

The Examiner's rejections are affirmed.

More specifically,

We affirm the rejection of claims 1–6, 8, 9, 12, 13, 15–23, and 25 under 35 U.S.C. § 101 because the claimed invention is directed to a judicial exception to patent-eligible subject matter without reciting significantly more.

We affirm the rejection of claims 1–6 and 8 under 35 U.S.C. § 103 as being unpatentable over Chatterjee, Laracey, and Dwight.

We affirm the rejection of claims 9, 12, 13, 16–19, and 21 under 35 U.S.C. § 103 over Chatterjee, Dwight, and Casey.

We affirm the rejection of claims 15, 20, 22, 23, and 25 under 35 U.S.C. § 103 as being unpatentable over Chatterjee, Dwight, Casey, and Laracey is affirmed.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–6, 8, 9, 12, 13, 15–23, 25	101	Eligibility	1–6, 8, 9, 12, 13, 15–23, 25	
1–6, 8	103	Chatterjee, Laracey, Dwight	1–6, 8	
9, 12, 13, 16–19, 21	103	Chatterjee, Dwight, Casey	9, 12, 13, 16–19, 21	
15, 20, 22, 23, 25	103	Chatterjee, Dwight, Casey, Laracey	15, 20, 22, 23, 25	

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
Overall Outcome:			1-6, 8, 9, 12, 13, 15-23, 25	

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) (*see* 37 C.F.R. § 1.136(a)(1)(iv)).

AFFIRMED