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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* ALI SADIGHIAN, EHSAN AMIRI,  
HERNAN P. AWAD, DEEPAK BHATIA,  
TOLGA HAN SEYHAN, and  
NICHOLAS DEMING SHERMAN<sup>1</sup>

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Appeal 2019-000600  
Application 14/579,567  
Technology Center 3600

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Before JILL D. HILL, LEE L. STEPINA, and ARTHUR M. PESLAK,  
*Administrative Patent Judges.*

STEPINA, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's decision rejecting claims 1–20. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM and designate our affirmance of certain claims as a NEW GROUND OF REJECTION pursuant to our authority under 37 C.F.R. § 41.50(b).

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<sup>1</sup> The Appeal Brief indicates that Amazon Technologies, Inc., Appellant, is the real party in interest. Appeal Br. 1.

### CLAIMED SUBJECT MATTER

The claims are directed to sharing inventory between ordering channels based on specific parameters. Spec. ¶ 18. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A computer-implemented method for generating, at a particular point in time, a decision to store during a planning horizon occurring after the particular point in time, units of an item in storage associated with an electronic marketplace, comprising:

receiving, by an inventory management system, data associated with a regular channel and a subscription channel, wherein:

the regular channel enables a regular order to be placed, at any point in time, for at least one unit of the item from the storage,

the subscription channel enables a subscription to be placed for the item from the storage,

the regular channel and the subscription channel share the storage that stores the units of the item, and

the inventory management system controls decisions about inventorying the item in the storage;

computing, by the inventory management system based at least in part on the data received, a first quantity of the units of the item based at least in part on an expected regular order to be placed at the regular channel during the planning horizon;

generating, by the inventory management system, a subscription order for at least one unit of the item, wherein the subscription order is generated ahead of the particular point in time based at least in part on a look ahead window associated with the subscription channel, wherein

the look ahead window specifies a time period during which subscription orders can be placed on behalf of corresponding subscribed customers, and

the time period occurs prior to the particular point in time for generating the decision to store, during the planning horizon, the units of the item;

computing, by the inventory management system, a second quantity of the units of the item based at least in part on the planning horizon and on the subscription order;

estimating, by the computer system, a loss from one or more canceled subscription orders expected during the planning horizon, the loss estimated based at least in part on the look ahead window; and

generating, by the inventory management system at the particular point in time occurring after the subscription order has been generated, the decision to store the units of the item in the storage, the decision generated based at least in part on the loss, the first quantity, and the second quantity and reducing the loss based at least in part on increasing a total of the first quantity and the second quantity, and the decision causing the units of the item to be stored in the storage in support of shared usage of the storage by the regular channel and the subscription channel during the planning horizon.

## REJECTIONS

I. Claims 1–20 are rejected under 35 U.S.C. § 101 as being directed to patent ineligible subject matter.

II. Claims 1–4 are rejected under 35 U.S.C. § 112(b) as being indefinite.

## OPINION

### *Rejection I, Eligibility*

Appellant makes arguments for the patent eligibility of claims 1–20 as a group. *See* Appeal Br. 5–14. We select claim 1 as the representative claim, and claims 2–20 stand or fall with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

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. *E.g.*, *Alice Corp. Pty. Ltd. 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*, 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 water-proof 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))).

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*, 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.*

In January of 2019, the PTO published revised guidance on the application of §101. 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) (hereinafter “Memorandum”). 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.

*See Memorandum.*

*Step 1 -- Statutory Category*

Claim 1 recites a series of steps, and, therefore, is a process. *See* Appeal Br. 15 (Claims App.). Claim 5 recites a non-transitory computer readable storage medium and claim 14 recites a system, and, therefore, these claims recite products. *See id.* at 16 and 20.

*Step 2A, Prong One -- Recitation of Judicial Exception*

In determining that claims 1–20 are directed to a judicial exception to patent eligibility, without significantly more, the Examiner takes the position that these claims are directed to a mathematical formula, namely, “an algorithm for calculating an inventory quantity,” or a mental process that “could be performed by a human with pen and paper, and without any apparatus.” Final Act. 5–6.

Appellant does not specifically contest whether the claims are directed to an abstract idea, and instead, argues that, to the extent “the claims are directed to the alleged abstract idea,” the claims include additional limitations that “when viewed as an ordered combination, are significantly more than the alleged abstract idea.” Appeal Br. 9.

Claim 1 recites the steps of 1) “receiving ... data associated with a regular channel and a subscription channel,” 2) “computing ... based at least in part on the data received, a first quantity of the units of the item,” 3)

“generating ... a subscription order for at least one unit of the item,” 4) “computing ... a second quantity of the units of the item, 5) estimating ... a loss from one or more canceled subscription orders,” and 6) “generating ... the decision to store the units of the item in the storage, the decision generated based at least in part on the loss, the first quantity, and the second quantity.” Appeal Br. 15–16 (Claims App.).

These steps involve receiving and analyzing of data. Indeed, two of these steps explicitly recite the process of “computing,” and one recites the process of “estimating.” In the context of claim 1, this language amounts to reciting a mental process of evaluating. *See In re BRCA1 & BRCA2-Based Heredity Cancer Test Patent Litig.*, 774 F.3d 755, 763 (Fed. Cir. 2014); *see also* Memorandum at 52 (defining mental processes as “concepts performed in the human mind (including an observation, evaluation, judgment, opinion” (footnote omitted)). Thus, we agree with the Examiner that claim 1 recites a mental process, and is within one of the three categories of abstract ideas set forth in the Memorandum. Accordingly, the outcome of our analysis under Step 2A, prong 1, requires us to proceed to Step 2A, prong 2. *See* Memorandum, 84 Fed. Reg. at 54.

*Step 2A, Prong 2 -- Integrated Into a Practical Application*

If a claim recites a judicial exception, then, in Prong Two, 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 Memorandum.* 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.*

Appellant contends that claim 1 improves upon the technology of “inventory management (e.g., the tracking and management via computing resources of the flow of items in, within, and out of storage space).” Appeal Br. 9 (citing Spec. ¶ 17). Appellant argues that claim 1 recites an improvement of the prior art. *See id.* at 9–11 (citing *BASCOM Global Internet Services v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016)). Specifically Appellant asserts that by using the claimed system, “it is now possible to use a single inventory management system for inventory shared between two ordering channels of different characteristics, while avoiding the problem of inventory cannibalization.” *Id.* at 11. According to Appellant, this was not possible previously because the prior art “relied on treating each channel separately and using two different inventory management systems.” *Id.*; *see also* Reply Br. 7–9.

The Examiner responds that, “unlike *Bascom*, any purported improvement to the inventory management system is not related to a particular computer arrangement of hardware, but rather, related to the abstract *algorithm* used to determine an optimal inventory.” Ans. 11.

Appellant argues that the claims recite additional elements beyond the alleged abstract idea that “amount to inventive programming because they relate to a solution to a technological problem.” Reply Br. 9.

We disagree with Appellant's contentions regarding the alleged "technological" improvement provided by the method of claim 1. Appellant's Specification discloses that "inventory 120 may represent a warehouse, a fulfillment center, a data center, a content distribution center, or some other storage resource for storing items." Spec. ¶ 23. "An item may represent a tangible item (e.g., consumer goods such as diapers) or an intangible item (e.g., a service, a multimedia content stored on a computer memory). Typically, an inventory management system may control operations of the inventory 120." *Id.*; Figs. 4 and 5. "In an example, the inventory management system 416 may represent a computing resource or computing service independent of but interfacing with computing resources or computing services of the electronic marketplace 412." *Id.* at ¶ 52. Computing resources "may be any type of computing devices such as, but not limited to, a mobile phone, a smart phone, a personal digital assistant (PDA), a laptop computer, a thin-client device, a tablet PC, etc." Spec. ¶ 57. Computing devices "may also include input/output (I/O) device(s) and/or ports, such as for enabling connection with a keyboard, a mouse, a pen, a voice input device, a touch input device, a display, speakers, a printer, etc." *Id.* The Specification also discloses that computing devices "may also include at least one or more processing units (or processor device(s)) 514 and one memory 516." *Id.* at 58. "The processor device(s) 514 may be implemented as appropriate in hardware, computer-executable instructions, firmware, or combinations thereof," and "may include computer-executable or machine-executable instructions written in any suitable programming language to perform the various functions described." *Id.* The "memory

516 may be volatile (such as random access memory (RAM)) and/or non-volatile (such as read-only memory (ROM), flash memory, etc.).” *Id.* at 59.

We agree with the Examiner that “Appellant has provided no explanation as to why the same computer with the same computing resources could not be used for either implementation.” Ans. 10. Thus, the alleged improvement provide by the method recited in claim 1 relates to the non-technical process of inventory management, not in the computing resources used to implement that process. That is, although “computing efficiency and use of computing resources (e.g., processor device usage, memory usage, database usage for tracking and updating inventory) may be improved with the second implementation” (*see* Spec. ¶ 30), “relying on a computer to perform routine tasks more quickly or more accurately is insufficient to render a claim patent eligible.” *See OIP Technologies, Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015).

Appellant’s reliance on *BASCOM* is also misplaced. The Federal Circuit recognized that Bascom’s installation of an Internet content filter at a particular network location is “a *technical* improvement over prior art ways of filtering such content” because such an arrangement advantageously allows the Internet content filter to have “both the benefits of a filter on a local computer and the benefits of a filter on the ISP server” and “give[s] users the ability to customize filtering for their individual network accounts.” *BASCOM*, 827 F.3d at 1350, 1352 (emphasis added). According to the panel, Bascom’s claims “do not preempt the use of the abstract idea of filtering content on the Internet or on generic computer components performing conventional activities.” *Id.* Instead, Bascom’s claims “carve out a specific location for the filtering system (a remote ISP server) and

require the filtering system to give users the ability to customize filtering for their individual network accounts.” *Id.*

In contrast to *Bascom*, Appellant’s claims and Specification are “not related to a particular computer arrangement of hardware, but rather, related to the abstract algorithm used to determine an optimal inventory number based on a set of variable parameters, to find an optimum solution that best reduces lost profits and maintains a desired service level.” Ans. 11.

Contrary to Appellant’s assertion, “the tracking and management via computing resources of the flow of items in, within, and out of storage space” (Appeal Br. 9) is not rooted in computer technology. Nor does it (1) provide any technical solution to a technical problem as required by *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014); (2) provide any particular practical application as required by *Bascom*; or (3) entail an unconventional technological solution to a technological problem as required by *Amdocs (Isr.) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288 (Fed. Cir. 2016). Rather, as recognized by the Examiner, there is no indication that the claims provide any “improvement to the computer.” Ans. 11.

Indeed, the only additional elements recited merely implement the abstract idea on generic computing elements (i.e., computer system, memory device, and processors, shown in Figures 4 and 5). Such a method (or system), as recited here, does not provide a particular transformation (or particular machine). Rather, the use of a generic computer device does not alone transform an otherwise abstract idea into patent-eligible subject matter. As our reviewing court has observed, “after *Alice*, there can remain no doubt: recitation of generic computer limitations does not make an

otherwise ineligible claim patent-eligible.” *DDR*, 773 F.3d at 1256 (citing *Alice*, 573 U.S. at 223). In summary, claim 1 does not integrate the recited judicial exception into a practical application. Thus, we proceed to step 2B.

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

In Step 2B, we determine whether the claim adds a specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field. *See* Memorandum.

Appellant argues that “the Examiner fails to identify any evidence at step 2B of the *Alice* analysis of the alleged ‘conventional’ nature of the ordered combination of the additional claims elements.” Appeal Br. 13, Reply Br. 12. Specifically, Appellant asserts that “additional claim elements . . . relate to inventive programming, as described in the specification at least at paragraphs [0029]–[0034].” Reply Br. 12.

We disagree because Appellant’s Specification (paragraphs 29–34) identifies the computing resources generically and identifies that the algorithm of the invention shown in Figures 6 and 7, although “reducing the use of computing resources,” can be performed merely by using “computing resources (e.g., processor device usage, memory usage, database usage for tracking and updating inventory)” (Spec. ¶ 30), thus indicating that implementation of the abstract idea is performed using known computers. Although we agree claim 1 recites numerous process steps implemented on a computer, the majority of these steps are steps that are part of the abstract idea recited in claim 1. Claim 1 does not recite anything significantly more than executing this abstract idea on a generic computing system.

We have considered all of Appellant's arguments in support of the patent eligibility of claim 1, but find them unpersuasive. Independent claim 5 (computer-readable storage media) and independent claim 14 (system) fall with claim 1.

As to dependent claims 2–4, 6–13, and 15–20, Appellant asserts that no analysis is provided “for why the Examiner finds the dependent claims to be subject matter ineligible.” Appeal Br. 14; *see also* Reply Br. 13. The Examiner's discussion of the dependent claims groups them with each respective independent claim. *See* Final Act. 3, 7–8.

Appellant provides no substantive explanation as to how any of the dependent claims recites something significantly more than the mental process recited in its respective independent claim. *See* Appeal Br. 14. We agree with the Examiner “the computer elements (i.e., ‘the inventory management system’ of claims 1–4, ‘the non-transitory computer-readable storage media’ of claims 5–13, and the ‘memory’ and ‘processor’ of claims 14–20) are merely recited with a high level of generality.” Final Act. 7.

Moreover, the specific limitations recited in the dependent claims merely expand upon the abstract idea set forth in the corresponding independent claims without adding anything significantly more. For example, claim 2 excludes certain units of the item from being reserved for either the subscription channel or regular channel. Creating such an internal designation in an inventory management system is merely an extension of the mental process of evaluating recited in independent claim 1. Claim 3 further defines “generating the decision” to include “comparing” and “adjusting,” which are also merely extensions of the mental process discussed above regarding claim 1. Claim 4 recites computing an

adjustment to the total quantity to meet a threshold, and claim 6 recites “setting,” “estimating” and “determining,” which limitations are also merely extensions of a mental process of evaluating as discussed above regarding claim 1. In claim 7, a quantity of items is adjusted based on the service level, in claim 8, orders are generated based on a period of peak demand, and in claim 9, orders are based on quality of service, each of which is an extension of the mental process of claim 1, executed on the computer-readable storage media of claim 5. Claims 10, 11, 12, and 13 include at least one of “setting,” “computing,” “providing,” “generating,” and “determining” which limitations are also merely extensions of the mental process discussed above regarding claim 1, and executed on the computer-readable storage media of claim 5. Similarly, claims 15 and 16 require the instructions to “compute,” “generate”, and “determine,” variables associated with inventory control, which are extensions of the mental process of claim 1, executed on the processor of claim 14. The same description applies to claims 17 and 18, which merely further extend the abstract idea by including adding, detecting, and updating steps executed on the processor of claim 14. In claim 19, orders are fulfilled during a given time period, which is an extension of the abstract idea of claim 1, executed on the processor of claim 14. Claim 20 recites “estimating,” “determining,” and “is computed” which limitations are extensions of the mental process discussed above in claim 1, and executed on the processor of claim 14.

We see no technological improvement, improvement in the functioning of a computer, particular machine, or transformation recited by the corresponding independent claim, and Appellant does not contend that any of these is recited. The dependent claims merely implement the abstract

idea using known computers to perform generic computer functions such as “setting,” “computing,” “providing,” and “generating,” and all of these functions merely extend the abstract idea discussed above regarding claim 1. Accordingly, we are not apprised of error in the Examiner’s determination that dependent claims 2–4, 6–13, and 15–20 are patent-ineligible.

Accordingly, we sustain the Examiner’s rejection of claims 1–20 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter.

Because our conclusion is based on findings of fact and reasoning that differ from and expand upon the rejection articulated by the Examiner, we designate our affirmance of claims 2–4, 6–13, and 15–20 as a NEW GROUND OF REJECTION under 37 C.F.R. § 41.50(b) to provide Appellants with a full and fair opportunity to respond to the rejection. *See In re Biedermann*, 733 F.3d 329, 336—337 (Fed. Cir. 2013) (Appellants are entitled to a fair opportunity to react to the thrust of the rejection).

### *Rejection II*

In rejecting claims 1–4 as indefinite, the Examiner finds that Appellant inadvertently has “not amended one instance of the term ‘computer system’ in claim 1 (in the ‘estimating’ limitation). Consequently, ‘the computer system’ does not have proper antecedent basis.” Final Act. 8.

Appellant argues that “the scope of claim 1 is clear in light of the previous amendments to claim 1 such that a person of ordinary skill in the art would understand that ‘the computer system’ refers to the previously amendments of ‘the inventory management system.’” Appeal Br. 14.

The Examiner responds that “the claim, on its face, is inconsistent and confusing; one of ordinary skill in the art would not clearly understand what computer system (if any) Applicant is referencing.” Ans. 15–16.

Appellant's argument is not persuasive. As the Examiner correctly notes, any potential ambiguity should be resolved during prosecution. *See* Ans. 15. The Specification supports the Examiner's position that these claims are unclear because it discloses that the "inventory management system may compute, or some other computing system may compute and provide [data] to the inventory management system." Spec. ¶ 86. Because claim 1 recites both "inventory management system" and "computing system," which, in light of the Specification, could be the same or different systems, one of ordinary skill in the art would not understand to which system Appellant refers. We sustain the Examiner's rejection of claims 1–4 as indefinite.

#### DECISION

The Examiner's decision rejecting claims 1–20 under 35 U.S.C. § 101 as being directed to non-statutory subject matter is affirmed, and we designate our affirmance of the rejection of claims 2–4, 6–13, and 15–20 a new ground of rejection.

The Examiner's decision rejecting claims 1–4 under 35 U.S.C. § 112(b) as being indefinite is affirmed.

#### FINALITY OF DECISION

This decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b). Section 41.50(b) provides "[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review." Section 41.50(b) also provides:

When the Board enters such a non-final decision, the appellant, within two months from the date of the decision, must exercise one of the following two options with respect to the new ground

of rejection to avoid termination of the appeal as to the rejected claims:

(1) *Reopen prosecution.* Submit an appropriate amendment of the claims so rejected or new Evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the prosecution will be remanded to the examiner. The new ground of rejection is binding upon the examiner unless an amendment or new Evidence not previously of Record is made which, in the opinion of the examiner, overcomes the new ground of rejection designated in the decision. Should the examiner reject the claims, appellant may again appeal to the Board pursuant to this subpart.

(2) *Request rehearing.* Request that the proceeding be reheard under § 41.52 by the Board upon the same Record. The request for rehearing must address any new ground of rejection and state with particularity the points believed to have been misapprehended or overlooked in entering the new ground of rejection and also state all other grounds upon which rehearing is sought.

Further guidance on responding to a new ground of rejection can be found in the Manual of Patent Examining Procedure § 1214.01.

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; 37 C. F. R. § 41.50(b)