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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MICHAEL MONTANO

Appeal 2019-000835
Application 14/061,746
Technology Center 3600

Before HUBERT C. LORIN, NINA L. MEDLOCK, and
MATTHEW S. MEYERS, *Administrative Patent Judges*.

MEDLOCK, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's rejection of claims 1–18. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

CLAIMED INVENTION

Appellant's claimed invention relates to “authenticating online customer service reviews” and, more particularly, to “utilizing customer payment, location and other unique data to authenticate online customer service reviews of a service provider” (Spec. ¶ 1). Claims 1 and 10 are the independent claims on appeal. Claim 1, reproduced below with bracketed notations added, is illustrative of the claimed subject matter:

1. A method of authenticating online customer service reviews provided via one or more mobile devices, the method comprising:

[(a)] receiving, by a mobile payment system, payment information from a customer for a service by a service provider;

[(b)] prompting, by the mobile payment system, the customer to complete a customer service review upon receipt of the payment information;

[(c)] receiving, by an authentication server, a customer service review from the customer in response to the prompt;

¹ We use the term Appellant to refer to “applicant” as defined in 37 C.F.R. § 1.42(a). Our decision references Appellant's Appeal Brief (“Appeal Br.,” filed July 3, 2018) and Reply Brief (“Reply Br.,” filed November 6, 2018), and the Examiner's Answer (“Ans.,” mailed September 6, 2018) and Non-Final Office Action (“Non-Final Act.,” mailed December 13, 2017). Appellant identifies ReviewBuzz, Inc. as the real party in interest. Appeal Br. 2.

[(d)] accessing, by the authentication server, information related to at least one unique customer identifier from an authentication database; and

[(e)] authenticating, by the authentication server, the customer service review as being created by the customer which received the service based on the at least one unique customer identifier.

REJECTIONS

Claims 1–18 are rejected under 35 U.S.C. § 101 as directed to patent-ineligible subject matter.

Claims 1, 2, and 5–7 are rejected under 35 U.S.C. § 102(b) as anticipated by Chang et al. (US 7,860,803 B1, iss. Dec. 28, 2010) (“Chang”).²

Claims 10–16 are rejected under 35 U.S.C. § 102(b) as anticipated by Black (US 2011/0218930 A1, published Sept. 8, 2011).

Claims 3, 4, and 8 are rejected under 35 U.S.C. § 103 as unpatentable over Chang and Tuchman et al. (US 2012/0266258 A1, published Oct. 18, 2012).

Claim 9 is rejected under 35 U.S.C. § 103 as unpatentable over Chang and Black.

Claim 17 is rejected under 35 U.S.C. § 103 as unpatentable over Black and Delepet (US 2009/0125382 A1, published May 14, 2009).

² Although the Examiner lists claims 1–8 in the heading as anticipated by Chang (Non-Final Act. 14), the Examiner only applies Chang to claims 1, 2, and 5–7 (*id.* at 14–19).

Claim 18 is rejected under 35 U.S.C. § 103 as unpatentable over Black and Page et al. (US 2005/0102197 A1, published May 12, 2005) (“Page”).

ANALYSIS

Patent-Ineligible Subject Matter

Appellant argues the pending claims as a group (Appeal Br. 7–15). 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, the Examiner determined that the claims are directed to “managing a customer service review, specifically, directed towards presenting a review to a customer based on a [sic] payment information from a service provider,” *i.e.*, to a fundamental economic practice, a method of organizing human activities, and an idea of itself (Non-Final Act. 4) and, therefore, to an abstract idea, similar to other concepts that the courts have held abstract (*id.* at 4–10). The Examiner also determined that the claims do not include additional elements or a combination of elements sufficient to amount to significantly more than the abstract idea itself (*id.* at 10–13).

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.*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 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.

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 solicited from the public.

We are not persuaded by Appellant’s arguments that the Examiner erred in determining that claim 1 is directed to an abstract idea (Appeal Br. 7–9). 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 the claims focus on an abstract idea, and not on any improvement to technology and/or a technical field.

Claim 1, reproduced above, recites a method of authenticating online customer service reviews provided via one or more mobile devices, the method comprising: (1) “receiving, by a mobile payment system, payment information from a customer for a service by a service provider” (step (a)); (2) “prompting, by the mobile payment system, the customer to complete a customer service review upon receipt of the payment information” (step (b)); (3) “receiving, by an authentication server, a customer service review from the customer in response to the prompt” (step (c)); (4) “accessing, by the authentication server, information related to at least one unique customer identifier from an authentication database” (step (d)); and (5) “authenticating, by the authentication server, the customer service review as being created by the customer which received the service based on the at least one unique customer identifier” (step (e)). These limitations, when

given their broadest reasonable interpretation, recite receiving payment information; prompting a customer to complete a customer service review; receiving the customer service review; and authenticating the customer service review based on a unique customer identifier.⁴ Although claim 1 recites that the method steps are performed using “one or more mobile devices,” “a mobile payment system,” “an authentication server,” and “an authentication database,” the underlying processes recited in the claim are all acts that could be performed by a human, e.g., mentally or manually, using pen and paper, without the use of a computer or any other machine. For example, a person, using pen and paper or via oral communication, could receive payment information; prompt customers to complete customer service reviews; receive customer service reviews; access unique customer identifiers (e.g., a number previously assigned to the customer and recorded with pen and paper); and authenticate the customer service review based on the unique customer identifier. Simply put, claim 1 recites a mental process, i.e., a concept performed in the human mind, including an evaluation or

⁴ This interpretation is consistent with Appellant’s own characterization of the claims as directed to

a method of authenticating online customer reviews for a plurality of service providers by receiving payment information from a customer and receiving a customer service review; using a unique customer identifier to verify that the review was created by an actual customer by accessing an authentication database of information related to the at least one unique customer identifier; and authenticating the at least one customer service review as being created by the customer which that [sic] received the service by matching the unique customer identifier with the information about the service performed for the customer by the service provider

(Appeal Br. 9).

judgment, and therefore, an abstract idea. *See* 2019 Revised Guidance, 84 Fed. Reg. at 52. *See also CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1373 (Fed. Cir. 2011) (holding that method steps that can be performed in the human mind, or by a human using a pen and paper, are unpatentable mental processes).

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 the “one or more mobile devices,” “a mobile payment system,” “an authentication server,” and “an authentication database,” — elements that, as the Examiner observes (Non-Final Act. 10), are described in the Specification as generic computer components (*see, e.g.*, Spec. ¶¶ 23–25, 48). We find no indication in the Specification, nor does Appellant direct us to any indication, that the operations recited in claim 1 require any specialized computer hardware or other inventive computer components, i.e., a particular machine, invoke any assertedly 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 ostensibly maintains that the pending claims are not directed to an abstract idea because, like the claims at issue in *Research Corp. Technologies, Inc. v. Microsoft Corp.*, 627 F.3d 859, 869 (Fed. Cir. 2010), the pending claims provide “specific applications or improvements to technologies in the marketplace” (Appeal Br. 11). Appellant argues that the present claims provide “a specific application of using unique identifying information to improve verification of the authenticity of customer feedback” and, thereby, improve upon “conventional feedback processes by ensuring that the feedback is provided by customers that actually received the goods or services for which feedback is provided, rather than anonymous negative or positive feedback provided by fictitious customers (i.e., customers that never received the goods or services)” (*id.*).⁶ But, we are not persuaded that verifying customer reviews is a technical problem, as

⁵ The 2019 Revised Guidance references the MANUAL OF PATENT EXAMINING PROCEDURE (“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.

⁶ Appellant asserts that “[p]rior to the electronic solutions claimed by the present application, customer service reviews could only be authenticated by a service provider if the review was presented in-person to the service provider by the customer” (Appeal Br. 11).

opposed to a business problem, or that employing unique identifying information to verify the authenticity of customer feedback is a technological improvement, as opposed to an improvement to a business practice.

We also are not persuaded by Appellant’s further argument that the present application is “claiming a technology-based solution that would require specific programming of various system components . . . to authenticate customer reviews based on interactions between mobile devices, mobile payment systems, and authentication servers” (Appeal Br. 13; *see also* Reply Br. 14). As described above, we find no indication in the Specification that the operations recited in claim 1 require any specialized computer hardware or other inventive computer components, invoke any assertedly inventive programming, or that the claimed invention is implemented using other than generic computer components to perform generic computer functions.

Indeed, although Appellant maintains that “specific programming” is required, claim 1 provides no technical details regarding how the authentication process is performed. Instead, the claim simply calls for an authentication server that accesses “information related to at least one unique customer identifier from an authentication database,” i.e., a generic computer component performing a generic computer function. *Cf. Prism Techs. LLC v. T-Mobile USA, Inc.*, 696 F. App’x 1014, 1017 (Fed. Cir. 2017) (claimed “authentication server,” “access server,” “Internet Protocol network,” “client computer device,” and “database” amounted to “indisputably generic computer components.”); *Credit Acceptance Corp. v. Westlake Services, LLC*, 859 F.3d 1044, 1057 (Fed. Cir. 2017); *Easy Web*

Innovations, LLC v. Twitter, Inc., No 11-CV-4550 (JFB) (SIL), 2016 WL 1253674 (E.D.N.Y. March 30, 2016), *aff'd*, 689 F. App'x 969 (Fed. Cir. 2017) (“receiving, authenticating, and publishing data” is an abstract idea).

Responding to the Examiner’s Answer, Appellant ostensibly attempts to draw an analogy between the present claims and those at issue in *Enfish* (Reply Br. 3–4; *see also* Appeal Br. 12 (arguing that the claims at issue are like those in *Enfish*)). But, we can find no parallel between claim 1 and the claims at issue in *Enfish*.

There, the Federal Circuit held that claims reciting a self-referential table for a computer database were not directed to an abstract idea under step one of the *Mayo/Alice* framework, and were patent eligible, because the claims were directed to an improvement in computer functionality. *Enfish*, 822 F.3d at 1336. The specification described the benefits of using a self-referential table – faster searching and more effective data storage – and highlighted the differences between the claimed self-referential table and a conventional database structure. *Id.* at 1333, 1337. The Federal Circuit, thus, rejected the district court’s characterization of the claims as directed to the abstract idea of “storing, organizing, and retrieving memory in a logical table,” *id.* at 1337, emphasizing that the key question is whether the focus of the claims is on the specific asserted improvement in computer capabilities or, instead, on a process that qualifies as an abstract idea for which computers are invoked merely as a tool. *Id.* at 1335–36.

Appellant maintains here that utilizing at least one unique customer identifier provides benefits over conventional feedback processes by ensuring that feedback is provided by customers that actually received the goods or services; and Appellant argues that this amounts to an improvement

in computer functionality analogous to *Enfish*'s self-referential table (Reply Br. 3–4; *see also* Appeal Br. 13 (arguing that by improving on customer feedback systems that enable fictitious reviews and making such systems more dynamic and efficient (i.e., enabling only authentic customer reviews to be provided), the claimed invention represents a software-based invention that improves the performance of the customer review system itself)). Yet, as the court expressly recognized in *Enfish*, there is a fundamental difference between computer functionality improvements, on the one hand, and uses of existing computers as tools to perform a particular task, on the other. The alleged advantages that Appellant touts do not concern an improvement to computer capabilities but instead relate to an alleged improvement in authenticating information, namely verifying that a review is from a particular customer identified by the at least one unique customer identifier – a process in which a computer is used as a tool in its ordinary capacity.

We also are not persuaded of Examiner error to the extent Appellant maintains that the claims are not directed to an abstract idea because the claims are allegedly novel, i.e., that the claims “are not directed to something that was being done before” (Appeal Br. 10). Neither a finding of novelty nor a non-obviousness determination automatically leads to the conclusion that the claimed subject matter is patent eligible. Indeed, “[g]roundbreaking, innovative, or even brilliant discovery does not by itself satisfy the § 101 inquiry.” *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 591 (2013). A novel and non-obvious claim directed to a purely abstract idea is, nonetheless, patent ineligible. *See Mayo*, 566 U.S. at 90; *see also Diamond v. Diehr*, 450 U.S. 175, 188–89 (1981) (“The ‘novelty’ of any element or steps in a process, or even of the

process itself, is of no relevance in determining whether the subject matter of a claim falls within the § 101 categories of possibly patentable subject matter.”).

It also is not controlling that the claims do not preempt all ways of authenticating customer reviews (Appeal Br. 13). 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.*⁷

⁷ In an effort to distinguish the pending claims from the claims at issue in *SmartGene, Inc. v. Advanced Biological Labs.*, 555 F. App'x 950 (Fed. Cir. 2014), Appellant argues that “[c]omparing new and old information would mean receiving new information and comparing it to stored information to see if it is the same or different” (Appeal Br. 12). Yet, comparing received information to stored information (to see if it matches) is exactly how the Specification describes the operation of the authentication server. *See* Spec. ¶ 28 (“The review authentication server 108 will match the unique customer identifier with data stored in a connected authentication database 110 or request data needed to authenticate the customer from customer records stored in a customer database 114 of a business server 112 of the service provider/business (step 208)”). *Cf. Berkheimer v. HP, Inc.*, 881 F.3d 1360, 1366 (Fed. Cir. 2018) (concluding that parsing, comparing, storing, and editing data are abstract ideas).

We conclude, for the reasons outlined above, that claim 1 recites a mental process, i.e., an abstract idea, and that the additional elements recited in the claim are no more than generic 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 adds specific limitations beyond the judicial exception that are not “well-understood, routine, conventional” activity in the field, or simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.

Appellant argues here that even if claim 1 is directed to an abstract idea, the claim “as a whole amounts to significantly more than the judicial exception” (Appeal Br. 14) “at least because the elements of claim 1 are not routine or conventional” (Reply Br. 15). Appellant acknowledges that “claim 1 may use arguably generic components,” but, according to Appellant, “these components operate in an unconventional manner to

achieve an improvement in a technological or Internet-centric application” (Reply Br. 15).

Appellant ostensibly refers to “communications with an authentication server” and “interactions between the devices,” i.e., mobile devices, mobile payment systems, and authentication servers, as providing a technological improvement (Appeal Br. 15). Yet, Appellant has not persuasively explained how the claimed communication (e.g., “receiving, by an authentication server, a customer service review”) amounts to an improvement to computer technology. The bare fact that claim 1 involves receiving information by an authentication server does not provide an inventive concept where, as here, the claimed “interaction” between the devices amounts to merely sending and receiving information. *See, e.g., buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350 (Fed. Cir. 2014) (“That a computer receives and sends the information over a network – with no further specification – is not even arguably inventive.”).

Appellant further argues that the section 101 rejection cannot be sustained because the Examiner has failed to “provide any evidence meeting the requirements of items (1)–(4) of the *Berkheimer Memo* to show that the combination of features is well-understood, routine or conventional.” (Reply Br. 16–17) (citing *Berkheimer v. HP, Inc.*, 881 F.3d 1360 (Fed. Cir. 2018), and the Office’s April 19, 2018 Memorandum to the Patent Examining Corps entitled, “Changes in Examination Procedure Pertaining to Subject Matter Eligibility, Recent Subject Matter Eligibility Decision (*Berkheimer v. HP, Inc.*)” (the “*Berkheimer Memorandum*”)).⁸ According

⁸ Available at: <https://www.uspto.gov/sites/default/files/documents/memo-berkheimer-20180419.PDF>

to Appellant, “the claimed combination of features recited in amended claim 1 is not shown to be well-understood, routine or conventional” (*id.* at 17).

That argument is not persuasive at least because “the relevant inquiry is not whether the claimed invention as a whole is unconventional or non-routine,” *BSG Tech LLC v. BuySeasons, Inc.*, 899 F.3d 1281, 1290 (Fed. Cir. 2018). Instead, the question under step two of the *Mayo/Alice* framework (i.e., step 2B) is whether the claim includes additional elements, i.e., elements other than the abstract idea itself, that “‘transform the nature of the claim’ into a patent-eligible application.” *Alice Corp.*, 573 U.S. at 217 (quoting *Mayo*, 566 U.S. at 79, 78).

Here, the claimed steps of receiving payment information, prompting the customer to complete a review, receiving a review from a customer, accessing information related to at least one unique customer identifier from an authentication database, and authenticating the customer service review are part of the abstract idea itself; they are not additional elements to be considered when determining whether claim 1 includes additional elements or a combination of elements that is sufficient to amount to significantly more than the judicial exception.

It could not be clearer from *Alice*, as described above, 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; *see also 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). In other words, the inventive concept under step two of the *Mayo/Alice* framework 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*, 899 F.3d at 1290 (“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.”) (citation omitted).

The Examiner determined here, and we agree, that the only claim elements beyond the abstract idea are “one or more mobile devices,” “a mobile payment system,” “an authentication server,” and “an authentication database,” i.e., generic computer components used to perform generic computer functions (Non-Final Act. 10) — a determination amply supported by, and fully consistent with the Specification (*see, e.g.*, Spec. ¶¶ 23–25, 48).⁹

⁹ The *Berkheimer* Memorandum expressly directs that an examiner may support the position that an additional element (or combination of elements) is well-understood, routine or conventional with “[a] citation to an express statement in the specification . . . that demonstrates the well-understood, routine, conventional nature of the additional element(s)” (*Berkheimer* Memorandum 3).

Appellant cannot reasonably maintain that there is a genuine issue of material fact regarding whether 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 generic computer components to perform generic computer functions, e.g., receiving information, prompting for information, accessing information, and authenticating 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) (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.”).

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 2–18, which fall with claim 1.

Anticipation

Independent Claim 1 and Dependent Claims 2 and 5–7 (Chang)

Appellant contends that the rejection of claim 1 under 35 U.S.C. § 102(b) is improper, and cannot be sustained because Chang does not disclose “receiving, by an electronic payment system, payment information from a customer for a service provided by a service provider,” as recited in claim 1 (Appeal Br. 16). Appellant acknowledges that Chang discloses a transaction server 102 (which the Examiner equates to the claimed “electronic payment system”) that transmits an email to a client prompting the client to submit a product review (*id.*). But, Appellant argues that “Chang is silent as to the ‘transaction server’ receiving anything, let alone, payment information from a customer for a service provided by a service provider,’ as set forth in claim 1” (*id.*). Thus, according to Appellant, the “[m]ere existence of the transaction information in a database is not the same as transmission of it from a source (e.g., a customer) to a destination (e.g., the claimed electronic payment server)” (*id.*; *see also* Reply Br. 17–18).

As best understood, Appellant does not maintain that the claimed “payment information” does not encompass the transaction information stored in Chang. Rather, Appellant appears to argue that Chang’s transaction information is stored by the transaction server, but not received by the transaction server from a customer.

Chang discloses a system comprising “transaction server 102, client computers 104, and communication network(s) 106 for interconnecting these components” (Chang, 4:50–52; Fig. 1). Transaction server 102 includes, *inter alia*, a “transaction database 220 that stores transaction records 222 of

customer transactions (e.g., purchases)” (*id.* at 5:23–24; Fig. 2). Each transaction record 222 includes, among other information, a Transaction ID 402 that uniquely identifies a particular transaction and a Customer ID 406 that associates the information in transaction record 220 with a particular customer (*id.* at 6:53–67; Fig. 4). Chang further discloses that “transaction IDs and customer IDs may be associated with online orders from online customers” (*id.* at 7:4–6). Each transaction record 222 can also include a charged flag 416 that indicates that the customer has been charged for the product (*id.* at 7:22–23). Transaction server 102 also includes a customer database 240 that stores customer records 242 (*id.* at 7:38–39; Fig. 4). Customer records 242 include a customer ID 406 and associated information about the customer, including billing address and billing information (*id.* at 7:39–51).

We agree with the Examiner that a person of ordinary skill in the art would understand that Chang discloses a transaction server that receives transaction information and customer information (including, *inter alia*, charged flag 416, billing address, and billing information) associated with online orders from online customers (*see* Non-Final Act. 14–15; *see also* Ans. 9–10). In other words, Chang discloses that transaction server 102 receives “payment information” for online orders from customers, as called for in claim 1.

Therefore, we sustain the Examiner’s rejection of claim 1 under 35 U.S.C. § 102(b). We also sustain the rejection of dependent claims 2 and 5–7, which are not argued separately.

Independent Claim 10 and Dependent Claims 11–16 (Black)

Appellant contends that the rejection of claim 10 under 35 U.S.C. § 102(b) is improper, and cannot be sustained because Black does not disclose “authenticating, by the authentication server, the at least one customer service review as being created by the customer which received the service if the at least one unique customer identifier matches the information about the service performed for the customer by the service provider” as recited in claim 10 (Appeal Br. 17–18). Appellant notes that the Examiner “cites to par. 0010, 0019, 0022, 0029 and additionally 0031–0036 in support of the rejection” (*id.* at 17). And Appellant argues that none of the cited paragraphs discloses or suggests the argued limitation at least because “‘a unique customer identifier’ is not disclosed and there is no explanation of how the ‘checking’ is performed” (*id.* at 18).¹⁰

In rejecting claim 10 as anticipated by Black, the Examiner found that Black discloses the argued limitation in paragraphs 10, 19, 22, 29 and 31–39. Paragraphs 37–39 of Black, in particular, disclose the details of the validation performed by the third party validator. For example, as the Examiner points out, paragraph 38 of Black “discloses where the ‘third-party validator validates initial information by **comparing** the temporal data associated with the initial information with the provider data collected from the service provider to ensure that the information was provided by a verified customer of the provider’” (Non-Final Act. 23) And based on this

¹⁰ Appellant acknowledges that Black discloses “checking to ensure initial customer feedback was provided by a verified customer” and provides “specific examples of temporal data used by the digital ratings device to associate the initial information to a customer” (*id.* at 18) (citing Black ¶¶ 19, 22, 29).

disclosure, the Examiner finds that “**Black** is performing **matching and checking operations in** verifying (authenticating) the information” (*id.*).

Appellant does not address paragraphs 37–39 of Black either in the Appeal Brief or Reply Brief. Nor does Appellant otherwise provide any argument to demonstrate that the Examiner’s findings are unreasonable or unsupported.

Therefore, we sustain the Examiner’s rejection of claim 10 under 35 U.S.C. § 102(b). *Cf. In re Baxter Travenol Labs.*, 952 F.2d 388, 391 (Fed. Cir. 1991) (“It is not the function of this court to examine the claims in greater detail than argued by an appellant, looking for [patentable] distinctions over the prior art.”). We also sustain the rejection of dependent claims 11–16, which are not argued separately.

Obviousness

Appellant does not argue the obviousness rejections of dependent claims 3, 4, 8, 9, 17, and 18, except by reference to Appellant’s arguments with respect to independent claims 1 and 10 (Appeal Br. 19). Appellant’s arguments with respect to independent claims 1 and 10 are not persuasive of Examiner error for the reasons set forth above. Accordingly, the Examiner’s obviousness rejections of dependent claims 3, 4, 8, 9, 17, and 18 are sustained.

CONCLUSION

In summary:

| Claims Rejected | 35 U.S.C. § | Reference(s)/Basis | Affirmed | Reversed |
|------------------------|--------------------|---------------------------|-----------------|-----------------|
| 1-18 | 101 | Eligibility | 1-18 | |
| 1, 2, 5-7 | 102(b) | Chang | 1, 2, 5-7 | |
| 10-16 | 102(b) | Black | 10-16 | |
| 3, 4, 8 | 103 | Chang, Tuchman | 3, 4, 8 | |
| 9 | 103 | Chang, Black | 9 | |
| 17 | 103 | Black, Delepet | 17 | |
| 18 | 103 | Black, Page | 18 | |
| Overall Outcome | | | 1-18 | |

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