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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 JAMES FISHER and MATTHEW DAVID MCCLELLAN

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Appeal 2019-001759
Application 14/883,192
Technology Center 2400

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Before JEAN R. HOMERE, MICHAEL J. STRAUSS, and
JOHN F. HORVATH, *Administrative Patent Judges.*

STRAUSS, *Administrative Patent Judge.*

DECISION ON APPEAL[1]

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant appeals from the
Examiner's Final decision to reject claims 1–18.[2] *See* Final Act. 1. We have
jurisdiction under 35 U.S.C. § 6(b).

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[1] We refer to the Specification, filed October 14, 2015 ("Spec."); the Final
Office Action, mailed December 29, 2017 ("Final Act."); the Appeal Brief,
filed July 2, 2018 ("Appeal Br."); the Examiner's Answer, mailed October
22, 2018 ("Ans."); and the Reply Brief, filed December 20, 2018 ("Reply
Br.").

[2] We use the word Appellant to refer to "applicant" as defined in 37 C.F.R.
§ 1.42. Appellant identifies Electrolux Home Products, Inc., as the real
party in interest. Appeal Br. 1.

We REVERSE. And enter a NEW GROUND OF REJECTION of claims 1, 7, and 13 under 35 U.S.C. § 101 pursuant to our authority under 37 C.F.R. § 41.50(b)

CLAIMED SUBJECT MATTER

The claims are directed to automatically setting a clock of a network-connected apparatus. Claim 1, reproduced below with disputed limitations emphasized (labelling added for clarity), is illustrative of the claimed subject matter:

1. An apparatus comprising a processor and a memory storing executable instructions that in response to execution by the processor cause the apparatus to at least:

 [(a)] *receive time information over a packet-switched computer network, the time information including a current standard time, time-zone offset and timestamps that define a predetermined timeframe*;

 [(b)] calculate a current local time from the current standard time and time-zone offset, and including an adjustment of the current local time in instances in which the timestamps indicate that the current standard time is within the predetermined timeframe; and

 [(c)] cause a clock to be set to the current local time.

REFERENCE

The prior art relied upon by the Examiner is:

Name	Reference	Date
Chapman	US 2015/0295669 A1	Oct. 15, 2015

REJECTION

Claims 1–18 stand rejected under 35 U.S.C. § 102(a)(2) as being anticipated by Chapman. Final Act. 2.

STANDARD OF REVIEW

We review the appealed rejections for error based upon the issues identified by Appellant, and in light of the arguments and evidence produced thereon. *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential).

OPINION

Examiner's Findings and Contentions of Error

The Examiner finds Chapman's CCAP core includes a processor and memory as recited in the preamble of claim 1. Final Act. 3. According to the Examiner, Chapman's receipt by timing module 26 of IEEE 1588 time synchronization messages disclose receiving the recited time information including a (i) current standard time, (ii) time-zone offset and (iii) timestamps that define a predetermined timeframe. *Id.* (citing Chapman ¶¶ 33–36). The Examiner finds Chapman's adjustment of a slave clock to agree with the time of its master clock teaches calculating a current local

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time from the received time information and setting a clock to the current

local time. *Id.* (citing Chapman ¶¶ 33–44, 67–69).

Appellant contends Chapman fails to disclose (A) the recited time

information (limitation (a)) and (B) calculating a current time from the time

information (limitation (b)). Appeal Br. 4–6. Appellant argues

> In the cited paragraphs, Chapman describes the process of time
> synchronization between master and slave clocks according to
> the Precision Time Protocol (PTP) specified by IEEE 1588.
> The process includes the exchange of PTP messages between
> the master and slave clocks. But in contrast to the time
> information of the claimed invention, none of the PTP
> messages include all of a current standard time, time-zone
> offset and timestamps that define a predetermined timeframe.
> There are at most two PTP messages from the master to the
> slave that have timestamps. A synch or follow-up message
> includes timestamp tl, and a delay response message includes
> timestamp t4. See Chapman, para. [0034]; and see Wikipedia,
> Precision Time Protocol (last modified Sep. 9, 2017)
> <https://en.wikipedia.org/wiki/Precision_Time_Protocol>.

Appeal Br. 4 (emphasis omitted). Thus, according to Appellant, Chapman

fails to disclose the recited time information according to limitation (a). *Id.*

In connection with the step of calculating a current local time

(limitation (b)), Appellant argues

> Chapman describes how its Converged Cable Access Platform
> (CCAP) core and R-PHY node manage time offset and
> frequency drift. As described, its CCAP core creates clock
> domain island(s) to track the [time] difference between the core
> and R-PHY node via IEEE 1588. The time difference is then
> used to delay or hastened downstream transmissions to delete or
> insert time when the core clock is respectively faster and slower
> than the R-PHY clock. In other embodiments, the sample rate
> at the core may be adjusted by puncturing out or adding
> samples when the core clock is respectively faster and slower

than the R-PHY clock. But nowhere in cited paragraphs does Chapman disclose calculation of current local time from the current standard time and time-zone offset, and including an adjustment of the current local time in instances in which the timestamps indicate that the current standard time is within the predetermined timeframe, as per the claimed invention.

Id. at 5.

Addressing the Examiner's finding that Chapman's re-stamp module updates timestamps to make them consistent with a local time, Appellant argues the process does not result in calculation of a current local time and adjustment of the current local time in instances in which the timestamps indicate the current local time is within a predetermined timeframe (e.g., during daylight savings time) as claimed. *Id.* According to Appellant, although Chapman considers time zones in restamping an event message with a new timestamp, the restamping is neither the current local time at the CCAP core nor is a CCAP core clock set to a calculated current local time as claimed. *Id.* at 6.

The Examiner responds that Chapman discloses "using the ordinary clock to communicate with the network via two logical interfaces based on a single physical port and implementing an event interface to send and receive time sync messages, which are time-stamped by a timestamp generation block based on the value of the local clock." Ans. 3 (citing Chapman ¶¶ 21, 33–36, and 74). Addressing calculation limitation (b), the Examiner explains

> Chapman discloses an event message that [is] received at CCAP core 12 in Texas at 10:01 AM from R-PHY node 14(1) with a timestamp of transmission corresponding to 8:00 AM in California may be re-stamped by time re-stamp module 80 of clock domain island 74(1) with a timestamp indicating 8:01

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>AM to ensure consistency with the local time of master clock at
>R-PHY node, see [0036] to [0044] and [0067] to [0069]

Ans. 4 (citing Chapman ¶¶ 36–44, and 67–69).

Appellant replies that even if Chapman's timestamps were found to disclose the claimed current standard time, "nowhere does Chapman expressly or inherently disclose that either [time sync] message 30(1) or [delay response message] 30(3) [received by Converged Cable Access Platform (CCAP) core 12] also includes a time-zone offset and timestamps that define a predetermined timeframe, as required by the claim." Reply Br. 3. According to Appellant, although Chapman's system manages a time offset between the CCAP core and R-PHY node, the messages received by the CCAP core do not include a time offset as recited by claim 1. *Id.* "Instead, Chapman discloses that its CCAP core determines the time difference." *Id.* (citing Chapman ¶ 42). Appellant further emphasizes Chapman's discussion of adjusting for time zone differences is only in connection with restamping event messages transiting between time zones and not in calculating a local time from time information received from the R-PHY node. Reply Br. 5.

Analysis

In order to anticipate under 35 U.S.C. § 102, a prior art reference must not only disclose all elements of the claim within the four corners of the document (whether expressly or inherently), but must also disclose those elements "arranged as in the claim." *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1548 (Fed. Cir. 1983). During examination of a patent application, pending claims are given their broadest reasonable construction consistent with the specification. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d

1359, 1364 (Fed. Cir. 2004). Under the broadest reasonable interpretation standard, claim terms are given their ordinary and customary meaning as would be understood by one of ordinary skill in the art in the context of the entire disclosure. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). Furthermore, all limitations of a claim must be considered when making a patentability determination. *In re Gulack*, 703 F.2d 1381, 1385 (Fed. Cir. 1983); *see also Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530 (Fed. Cir. 1983); and *Lantech, Inc. v. Keip Mach. Co.*, 32 F.3d 542, 546 (Fed. Cir. 1994).

Appellant's argument is persuasive of reversible Examiner error. As an initial issue, the Examiner's mapping of Chapman's disclosure to the disputed time information elements is insufficient. In the case of the claimed timestamps that define a predetermined timeframe (i.e. a time period including a start time and an end time, such as daylight saving time or some other designated time period), it is not clear how Chapman's time synchronization messages disclose this type of information. Furthermore, even if Chapman's time re-stamp module uses a time offset to restamp event messages, we find insufficient evidence that Chapman's restamping uses, in addition to time offsets, the claimed plural timestamps that define the predetermined timeframe.

Although the Examiner finds "[i]t is inherent that the New York [eastern standard time (EST)] local time also includes daylight saving time," none of Chapman's examples describes daylight saving time (e.g., eastern daylight time (EDT). Ans. 4. In any case, claim 1 requires more than an indication of whether particular time information falls within a predetermined timeframe (e.g., during EST versus during EDT). It requires

received timestamps (plural) that define a predetermined timeframe (e.g., the start and end of daylight saving time). In particular, Appellant's Specification discloses time information may include "[s]tart and end timestamps of a predetermined timeframe such as daylight saving time for the current year." Spec. ¶¶ 46, 49, and 51–52. Accordingly, consistent with the Specification, the mere designation of a time standard (e.g., standard versus daylight saving time) does not disclose the recited timestamps that define a predetermined timeframe. Thus, we find insufficient evidence to support a finding that Chapman discloses the claimed time information including a current standard time, time-zone offset, and timestamps that define a predetermined timeframe.

Furthermore, we are unpersuaded all recited components of the time information are used to calculate a current local time and cause a clock to be set to that time. As argued by Appellant, we agree that Chapman's restamping process does not cause a clock to be set to a local time calculated from all three time information components including, for example, timestamps that define a predetermined timeframe. *See* Appeal Br. 6. Although Chapman discloses that some embodiments use the re-stamp module to adjust a local time at a slave clock, there is no description of what information is used to make the adjustment.[3] For example, there is no indication that timestamps that define a predetermined timeframe (e.g., start and end of daylight saving time) are used to adjust a local clock. Even if any

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[3] In some embodiments, time re-stamp module 80 of each clock domain island 74(1) may adjust the respective local logical time at slave clock 75 to match the master clock time at corresponding R-PHY nodes 14(1)–14(N) based on the time difference determined from time sync messages 30 between CCAP core 12 and R-PHY nodes 14(1)–14(N). Chapman ¶ 68.

time adjustment were to take into consideration a time offset relating to daylight saving time, information about whether a particular time includes such an offset does not disclose making an adjustment based on whether "the timestamps indicate that the current standard time is within the [timestamps defining a] predetermined timeframe" as recited by claim 1.

For the reasons discussed above, and based on a preponderance of the evidence of record, we agree with Appellant the Examiner has failed to demonstrate that Chapman discloses the disputed limitations of independent apparatus claim 1. Independent method claim 7 and independent Beauregard-type claim 13 include similar corresponding limitations. Accordingly, we reverse the rejection of independent claims 1, 7, and 13 under 35 U.S.C. § 102(a)(2) as being anticipated by Chapman together with the rejection of dependent claims 2–6, 8–12, and 14–15 which fall with their respective base claims.

We note, in an *ex parte* appeal, the Board "is basically a board of review—we review . . . rejections made by [P]atent [E]xaminers." *Ex parte Gambogi*, 62 USPQ2d 1209, 1211 (BPAI 2001). "The review authorized by 35 U.S.C. Section 134 is not a process whereby the [E]xaminer . . . invite[s] the [B]oard to examine the application and resolve patentability in the first instance." *Ex parte Braeken*, 54 USPQ2d 1110, 1112 (BPAI 1999). Because we are a board of review and not a place of initial examination, we do not engage in a *de novo* examination supplementing the Examiner's findings in this particular case. Although the Board is authorized to reject claims under new grounds pursuant to 37 C.F.R. § 41.50(b), no inference should be drawn when the Board elects not to do so. *See Manual of Patent Examining Procedure* (MPEP) § 1213.02 (9th Ed., Mar. 2014).

Furthermore, our decision is limited to the findings before us for review. The Board does not "allow" claims of an application. Rather, the Board's primary role is to review adverse decisions of Examiners including the findings and conclusions made by the Examiner. *See* 37 C.F.R. § 41.50(a)(1) ("The Board, in its decision, may affirm or reverse the decision of the [E]xaminer in whole or in part on the grounds and on the claims specified by the [E]xaminer."). Therefore, despite this Decision reversing the Examiner's rejection, no inference should be made as to whether other prior art may exist rendering the claims unpatentable.

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NEW GROUND OF REJECTION
35 U.S.C. § 101

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Pursuant to our discretionary authority under 37 C.F.R. § 41.50(b), we enter a new ground of rejection for claims 1, 7, and 13 under 35 U.S.C. § 101 as being directed to a judicial exception to patent-eligible subject matter (an abstract idea) without reciting significantly more.

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Principles of Law

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A. SECTION 101:

Inventions for a "new and useful process, machine, manufacture, or composition of matter" generally constitute patent-eligible subject matter. 35 U.S.C. § 101. However, the U.S. 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. Pty. Ltd. v. CLS Bank International*, 573 U.S. 208, 216 (2014).

In determining whether a claim falls within an excluded category, we are guided by the Court's two-step framework, described in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66

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(2012), and *Alice. Alice*, 573 U.S. at 217–18 (citing *Mayo*, 566 U.S. at 75–77). In accordance with that framework, we first determine what concept the claim is "directed to." *See Alice*, 573 U.S. at 219 ("On their face, the claims before us are drawn to the concept of intermediated settlement, *i.e.*, the use of a third party to mitigate settlement risk."); *see also Bilski v. Kappos*, 561 U.S. 593, 611 (2010) ("Claims 1 and 4 in petitioners' application explain the basic concept of hedging, or protecting against risk.").

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

In *Diehr*, the claim at issue recited a mathematical formula, but the 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 187, 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 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*. at 191 (citing *Benson* and *Flook*).

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 (internal 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.*

B. USPTO SECTION 101 GUIDANCE:

In January 2019, the U.S. Patent and Trademark Office ("USPTO") published revised guidance on the application of 35 U.S.C. § 101. *See* 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) ("2019 Guidance, 84 Fed. Reg."), *updated by* USPTO, *October 2019 Update: Subject Matter Eligibility* (available at https://www.uspto.gov/sites/default/files/documents/peg_oct_2019_update.pdf) ("October 2019 Guidance Update"); *see also* October 2019 Patent Eligibility Guidance Update, 84 Fed. Reg. 55942 (Oct. 18, 2019) (notifying the public of the availability of the October 2019 Guidance Update). "All USPTO personnel are, as a matter of internal agency management, expected to follow the guidance." 2019 Guidance, 84 Fed. Reg. 51; *see also* October 2019 Guidance Update 1.

Under the 2019 Guidance, 84 Fed. Reg., we first look to whether the claim recites the following:

(1)   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); and

(2)   additional elements that integrate the judicial exception into a practical application (*see* MPEP §§ 2106.05(a)–(c), (e)–(h)).

2019 Guidance, 84 Fed. Reg. 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 to whether the claim:

(3)   adds a specific limitation beyond the judicial exception that is not "well-understood, routine, [and] 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.

2019 Guidance, 84 Fed. Reg. 56.

Analysis

STEP 2A, PRONG 1:

Under step 2A, prong 1, of the 2019 Guidance, 84 Fed. Reg., 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). 2019 Guidance, 84 Fed. Reg. 52–54.

Limitation (a) recites, in part,

receive time information . . . , the time information including a
current standard time, time-zone offset and timestamps that
define a predetermined timeframe.

Appeal Br. 9.

Appellant's Specification discloses acquiring "a time standard such as

Coordinated Universal Time (UTC), Greenwich Mean Time (GMT) or the

like." Spec. ¶ 44. Thus, a reasonable interpretation of a current standard

time is an agreed upon universal or standard time of day. The Specification

describes a time-zone offset as "a standard time offset (e.g., UTC offset)."

According to one source "[t]he **UTC offset** is the difference in hours and

minutes from Coordinated Universal Time (UTC) for a particular place and

date. It is generally shown in the format ±[hh]:[mm], ±[hh][mm], or ±[hh]."

UTC offset Wikipedia, https://en.wikipedia.org/wiki/UTC_offset (last

visited Sept. 22, 2020). Thus, a reasonable interpretation of a time-zone

offset is a time difference between the universal or standard time and a local

time at a given location. Finally, the Specification describes an example of

timestamps that define a predetermined timeframe as "[s]tart and end

timestamps of a predetermined timeframe such as daylight saving time for

the current year." Spec. ¶ 46. Daylight saving time is defined as "time usu.

one hour ahead of standard time." WEBSTER'S COLLEGIATE

DICTIONARY, Merriam-Webster, 10th Ed., 294 (1997). Thus, a reasonable

interpretation of timestamps includes dates and/or times during which an

additional or alternative time adjustment is to be made to determine a local

time based on a universal or standard time and a time offset. Thus, the

components of the recited time information used to calculate a local time include times, differences in times, and beginning and end dates or times. Gathering or receiving information, such as the recited standard time, time-zone offset, and timestamps that define a predetermined timeframe, constitutes a mental process, e.g., a mental observation. The 2019 Guidance, 84 Fed. Reg., recognizes mental processes, including observations, as constituting a patent-ineligible abstract idea. 2019 Guidance, 84 Fed. Reg. 52. Accordingly, limitation (a) recites an abstract idea.

> Limitation (b) recites

> calculate a current local time from the current standard time and time-zone offset, and including an adjustment of the current local time in instances in which the timestamps indicate that the current standard time is within the predetermined timeframe.

Appeal Br. 9. The Specification discloses

> In some examples, the current local time may be calculated in accordance with the following:

> 1. *Local Time = Standard Time + Time-Zone Offset*; and
> 2. If *Daylight Savings Start< Standard Time < Daylight Savings End*, then *Local Time = Local Time + 1 hour*

Spec. ¶ 47. Based on the example calculations provided in Appellant's Specification and the definitions above, the current local time calculations recited by limitation (b) constitute evaluations that can be performed in the human mind or with the aid of pencil and paper. The "mental processes" judicial exception includes concepts that can be performed by a human with a pen and paper as well as those that can be performed entirely in the mind. *See* October 2019 Guidance Update 9 ("A claim that encompasses a human performing the step(s) mentally with the aid of a pen and paper recites a

mental process.") (emphasis omitted). Thus, current local time calculating step (b) constitutes a mental process. The 2019 Guidance recognizes mental processes, including evaluations, as constituting a patent-ineligible abstract idea. 2019 Guidance, 84 Fed. Reg. 52.

Furthermore, calculating a current time, as recited by limitation (b), also constitutes performing mathematical calculations. This fact is evidenced by Appellant's description of adding or subtracting the time-zone offset to/from the current standard time and, as appropriate, adding an hour if the local time is within a predetermined timeframe (e.g., daylight saving time is in effect). The 2019 Guidance, 84 Fed. Reg., expressly recognizes mathematical relationships and calculations as constituting patent-ineligible abstract ideas. 2019 Guidance, 84 Fed. Reg. 52. Accordingly, on this additional basis, we further determine that limitation (b) recites an abstract idea.

Limitation (c) recites "cause a clock to be set to the current local time." Appeal Br. 9. Appellant's Specification does not provide a detailed description of what actions are required according to limitation (c). Therefore, under a broad but reasonable interpretation, causing a clock to be set to a current local time reasonably includes informing a person needing to reset a clock or watch of the current local time. For example, it is a common experience that, upon landing, a member of an airliner's flight crew will inform passengers of the current local time. We note in passing that, because aircraft operations typically are controlled using UTC, it would be expected that the flight crew would mentally perform the necessary time adjustment recited by limitation (b) in arriving at the local time. In any case, telling time so that a clock can be set to the current local time reasonably is

considered a type of social activity and/or a form of teaching included within the category of managing personal behavior or relationships or interactions between people and, accordingly, a certain method of organizing human activity. The 2019 Guidance, 84 Fed. Reg., expressly recognizes a certain methods of organizing human activity as constituting patent-ineligible abstract ideas. 2019 Guidance, 84 Fed. Reg. 52. Accordingly, limitation (c) recites an abstract idea.

For these reasons, we determine all limitations (a) through (c) of claim 1 recite a judicial exception to patent-eligible subject matter under step 2A, prong 1, of the 2019 Revised Guidance, 84 Fed. Reg.

Step 2A, Prong 2

Under step 2A, Prong 2, of the 2019 Revised Guidance, 84 Fed. Reg., we determine whether any of the additional elements beyond the abstract idea integrate the abstract ideas into a practical application. 2019 Guidance, 84 Fed. Reg. 54. 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; *see also* MPEP § 2106.05(a).

In addition to the actions required by claim limitations (a) though (c) which we determine recite concepts identified as abstract ideas, certain elements of claim 1 also constitute insignificant extra-solution activity to the judicial exception. In particular, claim element (a) recites "receive time information over a packet-switched computer network, the time information including a current standard time, time-zone offset and timestamps that

define a predetermined timeframe." This limitation reasonably can be characterized as merely constituting the insignificant pre-solution activity of data gathering.

> An example of pre-solution activity is a step of gathering data for use in a claimed process, *e.g.,* a step of obtaining information about credit card transactions, which is recited as part of a claimed process of analyzing and manipulating the gathered information by a series of steps in order to detect whether the transactions were fraudulent.

MPEP § 2106.05(g). The Federal Circuit has held that data gathering steps "cannot make an otherwise nonstatutory claim statutory." *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1370 (Fed. Cir. 2011) (quoting *In re Grams*, 888 F.2d 835, 840 (Fed. Cir. 1989)).

Limitation (c) recites "cause a clock to be set to the current local time." As discussed above, under a broad but reasonable interpretation, limitation (c) includes providing the current local time such that, for example, a person can set a clock or watch to the current local time. Accordingly, limitation (c) does not add any meaningful limitations to the noted abstract idea because it reasonably may be characterized as merely being directed to the insignificant post-solution activity of transmitting data. *E.g.*, *Apple, Inc. v. Ameranth*, *Inc.*, 842 F.3d 1229, 1241–42 (Fed. Cir. 2016) (holding that printing or downloading generated menus constituted insignificant extra-solution activity).

Thus, limitations (a) and (c) recite the type of extra-solution activity (i.e., activities in addition to the judicial exception) the courts have determined insufficient to transform judicially excepted subject matter into a patent-eligible application. *See* MPEP § 2106.05(g); *see also* 2019

Guidance, 84 Fed. Reg. 55, n.31; *Bancorp Servs, L.L.C. v. Sun Life Assurance Co. of Can.*, 771 F.Supp.2d 1054, 1066 (E.D. Mo. 2011) aff'd, 687 F.3d at 1266 (Fed. Cir. 2012) (Explaining that "storing, retrieving, and providing data . . . are inconsequential data gathering and insignificant post solution activity."); *Bilski v. Kappos*, 561 U.S. 593, 612 (2010) (holding the use of well-known techniques to establish inputs to the abstract idea as extra-solution activity that fails to make the underlying concept patent eligible); and *Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350, 1355 (Fed. Cir. 2016 (Explaining that "selecting information, by content or source, for collection, analysis, and display does nothing significant to differentiate a process from ordinary mental processes.").

In addition to the claim elements identified above as constituting mental processes, mathematical concepts, and certain method of organizing human activity, claim 1 requires a processor and a memory storing executable instructions. Appellant discloses the use of conventional processor and memory components. Spec. ¶¶ 56–57.

Consistent with the 2019 Guidance, these additional elements are not practical applications of a judicial exception as they are included among an additional element that merely recites "apply it" or similar language, or that merely includes instructions to implement an abstract idea on a computer, or that merely uses a computer as a tool to perform an abstract idea. 2019 Guidance, 84 Fed. Reg. 54. *See Alice*, 573 U.S. at 221 ("[M]erely requir[ing] generic computer implementation[] fail[s] to transform that abstract idea into a patent-eligible invention."); *see also* MPEP § 2106.05(f)(2) ("Use of a computer or other machinery in its ordinary capacity for economic or other tasks (*e.g.*, to receive, store, or transmit data)

or simply adding a general purpose computer or computer components after the fact to an abstract idea (*e.g.*, a fundamental economic practice or mathematical equation) does not provide significantly more.").

Limitation (a) requiring the time information be received over a packet-switched computer network is likewise insufficient to integrate an abstract idea into a practical application. MPEP § 2106.05(f) (identifying "[s]electing a particular data source or type of data" as an example of extra-solution activity).

Finally, we do not ascertain any technical improvement implemented by the apparatus of claim 1. Instead, if there is any improvement, it is to the underlying abstract idea of calculating a current local time from the current standard time and time-zone offset including an adjustment of the current local time in instances in which the current standard time is within a predetermined timeframe, not to the performance or operation of the processor or memory or some other technology.

For the reasons discussed, the claims do not include additional elements that are sufficient to amount to significantly more than the judicial exception because the additional elements do not effect an improvement to another technology, technical field, or to the functioning of a computer itself. *See* MPEP § 2106.05(a). We further determine claim 1 does not recite:

(i)   an application of the abstract idea with, or by use of, a particular machine;

(ii)   a transformation or reduction of a particular article to a different state or thing; or

(iii)   other meaningful limitations beyond generally linking the

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use of the abstract idea to a particular technological
environment.

See id. §§ 2106.05(b), (c), (e)–(h). Thus, claim 1 does not integrate the
judicial exception into a practical application.

Step 2B

Under step 2B of the 2019 Guidance, 84 Fed. Reg., we next analyze
whether claim 1 adds any specific limitations beyond the judicial exception
that, either alone or as an ordered combination, amount to more than "well-
understood, routine, conventional" activity in the field. 2019 Guidance,
84 Fed. Reg. 56; *see also* MPEP § 2106.05(d).

In the present case, all claim elements, with the exception of the
processor and memory, correspond to concepts determined to be abstract
ideas for the reasons discussed above in connection with prong 1 of our
analysis and/or merely constitute extra-solution activity under prong 2.
Appellant's lack of disclosure of computer hardware or functional
requirements and the lack of details describing implementation of the recited
functions (such as might have been indicated by inclusion of a detailed flow
chart depicting unconventional computer operations and/or routines for
performing each of the claimed steps), persuades us that the omitted details
are well-understood, routine, and conventional. *See, e.g.*, MPEP
§ 2106.07(a)(III)(A).[4]

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[4] 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

Consistent with the *Berkheimer* Memorandum, the claims merely recite generic computer components performing generic computing functions that are well-understood, routine, and conventional.[5] *See Alice*, 573 U.S. at 225 (The "use of a computer to obtain data, adjust account balances, and issue automated instructions; all of these computer functions are 'well-understood, routine, conventional activit[ies]' previously known to the industry.") (quoting *Mayo*, 566 U.S. at 71–73); *see also Benson*, 409 U.S. at 65 (Noting that a "computer operates then upon both new and previously stored data. The general-purpose computer is designed to perform operations under many different programs."); *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1096 (Fed. Cir. 2016) (noting that using generic computing components like a microprocessor or user interface does not transform an otherwise abstract idea into eligible subject matter); *Mortg. Grader, Inc. v. First Choice Loan Servs. Inc.*, 811 F.3d 1314, 1324–25 (Fed. Cir. 2016) (indicating components such as an "interface" are generic computer components that do not satisfy the inventive concept requirement); and MPEP § 2106.05(d)(II) (citing *Alice* and *Mayo*) *accord Berkheimer* Memo 3–4.

For these reasons, we determine that claim 1 does not recite additional elements that, either individually or as an ordered combination, amount to

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not need to describe the particulars of such additional elements to satisfy 35 U.S.C. [§] 112(a).

[5] Memorandum on Changes in Examination Procedure Pertaining to Subject Matter Eligibility, Recent Subject Matter Eligibility Decision (*Berkheimer v. HP, Inc.*) (Apr. 19, 2018) available at: https://www.uspto.gov/sites/defaultfiles/documents/memo-berkheimer-20180419.PDF ("*Berkheimer* Memo").

significantly more than the judicial exception within the meaning of the 2019 Revised Guidance. 84 Fed. Reg. 52–55; *see also* MPEP § 2106.05(d).

DECISION SUMMARY

For the reasons discussed above, we conclude independent apparatus claim 1 is not patent eligible under 35 U.S.C. § 101. Independent method claim 7 and independent Beauregard-type claim 13 include similar corresponding limitations and, accordingly, also are not patent eligible under 35 U.S.C. § 101. We leave to the Examiner to consider whether dependent claims 2–6, 8–12, and 14–18 are also patent ineligible under 35 U.S.C. § 101.

We reverse the Examiner's rejection of claims 1–18 under 35 U.S.C. § 102(a)(2) as being anticipated by Chapman.

We enter a new ground of rejection, rejecting claims 1, 7, and 13 under § 101 as being directed to patent ineligible subject matter.

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

Rule 37 C.F.R. § 41.50(b) also provides that the Appellant, <u>WITHIN TWO MONTHS FROM THE DATE OF THE DECISION</u>, 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. . . .

(2) *Request rehearing.* Request that the proceeding be reheard under § 41.52 by the Board upon the same record. . . .

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Basis/Reference(s)	Affirmed	Reversed	New Ground
1–18	102(a)(2)	Chapman		1–18	
1, 7, 13	101	Eligibility			1, 7, 13
Overall Outcome				1–18	1, 7, 13

REVERSED
37 C.F.R. § 41.50(b)