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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* BRIAN LYNN and LAWRENCE MILLER

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Appeal 2019-002121  
Application 14/254,114  
Technology Center 3600

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Before MAHSHID D. SAADAT, ALLEN R. MacDONALD, and  
NABEEL U. KHAN, *Administrative Patent Judges*.

MacDONALD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>1</sup> appeals from the Examiner's decision to reject claims 32–36, 40–44, and 46–58. Claims 1–31, 37–39, and 45 were cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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<sup>1</sup> We use the word Appellant to refer to “applicant” as defined in 37 C.F.R. § 1.42(a). Appellant identifies the real party in interest as JPMorgan Chase Bank, N.A. Appeal Br. 3.

CLAIMED SUBJECT MATTER

Claim 32 is illustrative of the claimed subject matter (formatting and bracketed material added):

32. A computer-implemented method for performing online trading of financial instruments, the method comprising:
  - [A]. storing an order submission application in a computer memory, the order submission application including rules for implementing an investment strategy encompassing multiple types of financial instruments;
  - [B]. facilitating trading of the financial instruments by executing programming of the order submission application with at least one computer processor and performing steps including;
  - [C]. receiving and processing real time updates from a financial instrument server coupled to external pricing sources, the real time updates transmitted over the Internet from the financial instrument server through a dynamic data exchange interface coupled to the order submission application and an Internet browser, the dynamic data exchange interface enabling the financial instrument server and the order submission application to share data; and
  - [D]. applying the investment strategy to the real time updates to determine if an order should be generated for a selected one or more of the financial instruments;
  - [E]. generating an order for the one or more selected financial instruments when the investment strategy indicates an order should be generated, the order submission application automatically assigning an order identifier to the order when the order is generated by the order submission

application;

[F]. transmitting the order through the dynamic data exchange interface over the Internet to the financial instrument server for execution;

[G]. saving the order identifier at the financial instrument server and generating a new and unique server identifier for placement in the order to a trading engine;

[H]. correlating, at the financial instrument server, the order identifier with the server order identifier upon receipt of an update from the trading engine; and

[I]. updating the order submission application by transmitting updates from the financial instrument server over the Internet upon execution of the order.

### REJECTION

The Examiner rejects claims 32–36, 40–44, and 46–58 under 35 U.S.C. § 101 for being directed to patent-ineligible subject matter. Ans. 3–6.

Appellant argues for the patent-eligibility of independent claims 32, 42, and 52. Appellant does not present separate arguments for claims 33–36, 40–41, 43–44, 46–51, and 53–58. Thus, the rejection of these claims turns on our decision as to one of claims 32, 42, and 52. Except for our ultimate decision, we do not discuss the rejection of claims 33–36, 40, 41, 43, 44, 46–51, and 53–58.

### OPINION

We have reviewed the Examiner’s rejections in light of Appellant’s arguments that the Examiner has erred. We concur with the conclusions

reached by the Examiner. We highlight the following points.

A. Section 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.

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. *E.g.*, *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014).

In determining whether a claim falls within an excluded category, we are guided by the Court’s two-part framework, described in *Mayo* and *Alice*. *Id.* at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–77 (2012)). In accordance with that framework, we first determine what concept the claim is “directed to.” *See 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.

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252, 267–68 (1854)); 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; *see also id.* at 191 (“We view respondents’ claims as nothing more than a process for molding rubber products and not as an attempt to patent a mathematical formula.”). Having said that, the 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.* (citation omitted) (citing *Benson* and *Flook*); *see, e.g., id.* at 187 (“It is now commonplace that an *application* of a law of nature or mathematical formula to a known structure or process may well be deserving of patent protection.”).

If the claim is “directed to” an abstract idea, we turn to the second part 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.* (alterations in 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.*

B. USPTO Section 101 Guidance

In January 2019, the U.S. Patent and Trademark Office (USPTO) published revised guidance on the application of § 101. *See 2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019) (“2019 Revised Guidance”).<sup>2</sup> “All USPTO personnel are, as a matter of internal agency management, expected to follow the guidance.” *Id.* at 51; *see also* October 2019 Update at 1.

Under the 2019 Revised Guidance and the October 2019 Update, we first look to whether the claim recites:

- (1) any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human activity such as a fundamental economic practice, or mental processes) (“Step 2A, Prong One”); and
- (2) additional elements that integrate the judicial exception into a practical application (*see* MPEP §§ 2106.05(a)–(c), (e)–(h) (9th ed. Rev. 08.2017, Jan. 2018)) (“Step 2A, Prong Two”).<sup>3</sup>

2019 Revised Guidance, 84 Fed. Reg. at 52–55.

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<sup>2</sup> In response to received public comments, the Office issued further guidance on October 17, 2019, clarifying the 2019 Revised Guidance. USPTO, *October 2019 Update: Subject Matter Eligibility* (the “October 2019 Update”) (available at [https://www.uspto.gov/sites/default/files/documents/peg\\_oct\\_2019\\_update.pdf](https://www.uspto.gov/sites/default/files/documents/peg_oct_2019_update.pdf)).

<sup>3</sup> This evaluation is performed by (a) identifying whether there are any additional elements recited in the claim beyond the judicial exception, and (b) evaluating those additional elements individually and in combination to determine whether the claim as a whole integrates the exception into a practical application. *See* 2019 Revised Guidance – Section III(A)(2), 84 Fed. Reg. at 54–55.

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, do we then look, under Step 2B, to whether the claim:

(3) adds a specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field (*see* MPEP § 2106.05(d)); or

(4) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.

2019 Revised Guidance, 84 Fed. Reg. at 52–56.

C. Examiner’s § 101 Rejection *Alice/Mayo* – Steps 1 and 2

C.1. 2019 Revised Guidance Step 2A – Prong One

Applying the *Alice/Mayo* analysis, the Examiner determines that independent claims 32, 42, and 52 recite an abstract idea.

Regarding independent claims 32, 42, and 52, the claimed invention is not directed to patent eligible subject matter because the claimed invention is directed to a judicial exception (i.e., a law of nature, a natural phenomenon, or an abstract idea) without significantly more (*Alice Corp. Pty. V. CLS Bank International* (Supreme Court, 2014)). ***The claim is directed to (i) a fundamental economic practice, (ii) a method of organizing human activities, and/or (iii) an idea, in and of itself.***

....

In the instant case, ***the claim(s) is/are directed towards trading financial instruments, which is a fundamental economic practice*** and is not meaningfully different than those commerce and economic concepts that have been identified as abstract by the courts as explained in detail below. . . .

Claim 32, 42, and 52 recites, in part, a method for performing the steps of: storing order submissions, facilitating trading, processing real time updates, applying investment strategies, generating orders, transmitting orders and updating



order submission upon trade execution. ***These steps describe the concept of trading financial instruments.*** These steps are analogous to “generating a second menu from a first menu and sending the second menu to another location” (*Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229 Fed. Cir. 2016) collecting information, analyzing it, and displaying certain results of the collection and analysis (*Electric Power Group v Alstom S.A.*, 830 F.3d 1350, 1354 Fed. Cir. 2016) and “organizing information through mathematical correlations” (*Digitech Image Techs. LLC v Electronics for Imaging Inc.*), ***which are all examples of abstract ideas.*** The elements of the Applicant’s claims are similar to these exemplary abstract ideas. In addition the claims as a whole ***are directed to trading financial instruments which is a “fundamental economic practice”*** (*Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, *Bilski v. Kappos*, *buySAFE Inc. v. Google Inc.*, *Ultramercial Inc. v. Hulu, LLC*).

Ans. 3–5 (emphasis added).

C.2. 2019 Revised Guidance Step 2A – Prong Two

Further applying the *Alice/Mayo* analysis, the Examiner determines that independent claims 32, 42, and 52 are directed to an abstract idea:

The claim(s) does/do not include additional elements that are sufficient to amount to significantly more than the judicial exception because the additional element(s) or combination of elements in the claim(s) other than the abstract idea per se ***amount(s) to no more than: . . . mere instructions to implement the idea on a computer . . . .***

. . . The claims do not include limitations or additional elements that are sufficient to amount to significantly more than the abstract idea because ***the claims do not include an improvement to another technology or technical field, an improvement to the functioning of the computer itself, or meaningful limitations beyond generally linking the use of an abstract idea to a particular technological environment. . . .***

. . . .

. . . There is ***nothing stated within the claims that is an improvement to a technical field, nor that illustrates what is superior about the particular processors that are recited.*** . . .

. . . Examiner notes that looking at the elements as a combination does not add anything more than the elements analyzed individually nor does interpreting the claims in view of the specification. ***There is no indication that the combination of elements improves the functioning of a computer or improves any other technology.*** . . .

. . . .

. . . Here, the claimed invention is a ***mere administrative mechanism for providing a business solution to a non-technical problem.*** Any problems which are addressed ***do not appear to require a technical, but rather an administrative business solution or a business plan enhanced by common generic hardware.*** . . .

. . . .

. . . Applying software and computers to abstract ideas as claimed is not significantly more. Utilizing a GUI to display and submit trade information and orders ***is not a technical solution but an economic one.*** . . . Applicant's claims ***are not focused on improving computer capabilities but on placement of a trade. Placing trades using an interface is solving a business not technical problem.*** Using computers to do so is not improving computer processing. Examiner further notes that programming computers with software to display specialized interactive trading screens is ***solving a business problem using computers.*** The processing of a computer itself ***is not improved by the programming, if there is a benefit, it is to traders, not to computer technology.*** In other words, the benefit is to order entry, not computer processing.

Ans. 3–4, 6, 8, 10, 13–14 (emphasis added).

### C.3 2019 Revised Guidance Step 2B

Applying the *Alice/Mayo* analysis, the Examiner determines:

The claim(s) does/do not include additional elements that are sufficient to amount to significantly more than the judicial

exception because the additional element(s) or combination of elements in the claim(s) other than the abstract idea per se amount(s) to no more than: . . . ***recitation of generic computer structure that serves to perform generic computer functions that are well-understood, routine, and conventional activities previously known to the pertinent industry.***

. . . The claim recites the additional elements of a computer memory/processor to perform the claimed steps. ***The computer memory/processor is recited at a high level of generality and only performs generic functions that are well-understood, routine and conventional activities previously known to the industry. . . .***

. . . The Alice decision noted that generic structures that merely apply the abstract ideas are not significantly more than the abstract ideas, and ***Applicant’s specification reinforces the premise that the computer of the claim language is general purpose (paragraphs [0017 & 0018]). . . .***

. . . .

. . . The generically recited computer elements such as computer memory/processor do not add a meaningful limitation to the abstract idea because ***they would be routine in any computer implementation.***

Ans. 3–6, 9 (emphasis added).

#### D. Appellant’s § 101 Arguments and Board’s Analysis

##### D.1. 2019 Revised Guidance Step 2A, Prong 1

Appellant contends:

In applying the two-step subject matter eligibility standard, the Examiner has determined that the claims are “directed towards trading financial instruments, which is a fundamental economic practice. . . .” Appellant respectfully submits that the error in the Examiner’s analysis lies most significantly in ***this dramatic oversimplification of the claimed subject matter.*** . . . The error made by the district court in *Enfish* is precisely the same as the Examiner’s error here; indeed, ***this “high level” description of the claims as “trading financial***

*instruments” is completely untethered from the actual language of the claims. . . .*

. . . .

Additionally, the characterization of the claims as being directed to “trading financial instruments” *is not only an over-generalization, but an inaccurate overgeneralization*. While the invention is utilized in the field of trading of financial instruments, *the invention itself is not directed to the concept of trading*. Appellant acknowledges that “trading” is known. *Rather, the invention involves a computing technique that can be used to facilitate trading*.

Appeal Br. 13–15 (Appellant’s citations omitted; panel’s emphasis added); *see also* Reply Br. 2–3, 5–6.

Independent claim 32 recites the following steps:

[A] “storing an order submission application . . . , the order submission application including rules for implementing an investment strategy encompassing multiple types of financial instruments”;

[B] “facilitating trading of the financial instruments . . . and performing steps including”;

[C] “receiving and processing real time updates from a financial instrument server coupled to external pricing sources”;

[D] “applying the investment strategy to the real time updates to determine if an order should be generated for a selected one or more of the financial instruments”;

[E] “generating an order for the one or more selected financial instruments when the investment strategy indicates an order should be generated”; and

[F] “transmitting the order . . . to the financial instrument server for execution.”

Independent claims 42 and 52 recite similar elements. Consistent

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with the Examiner’s findings, the steps ([A]–[F]) recite a method of trading financial instruments involving receiving and processing real time updates, applying an investment strategy to the real time updates, generating an order for financial instruments, and transmitting the order. *See* Non-Final Act. 4, 6. The trading of financial instruments is a well-known and prevalent economic practice, as admitted by Appellant in Appellant’s Specification:

Online trading of financial instruments such as equities (i.e., stocks) has become increasingly popular. In order to facilitate such trading, systems have been developed to provide data streams of real time exchange market data . . . . Systems have further been developed to accept this exchange data into electronic spreadsheets and to provide a link from the spreadsheet to exchange trading systems.

Spec. ¶ 2. Thus, like the concept of mitigating settlement risk in *Alice*, and the concept of hedging against risk in *Bilski v. Kappos*, 561 U.S. 593, 611 (2010), the concept of trading financial instruments “is a fundamental economic practice long prevalent in our system of commerce.” *Alice*, 573 U.S. at 219. Accordingly, we conclude claims 32, 42, and 52 recite a fundamental economic practice, which is one of certain methods of organizing human activity, where certain methods of organizing human activity is one of the enumerated categories of abstract ideas in the 2019 Revised Guidance.

Appellant’s argument that claims 32, 42, and 52 are not ***directed to*** an abstract idea because the Examiner has oversimplified claim elements in describing the claims as “trading financial instruments” is not persuasive because the inquiry at Step 2A, Prong 1 of the 2019 Revised Guidance is not whether the claims are ***directed to*** an abstract idea, but rather whether the claims ***recite*** an abstract idea. As the Examiner has identified the respective elements of claims 32, 42, and 52, that the Examiner concludes recite the

abstract idea of trading financial instruments (*see* Ans. 6), we do not find error in the Examiner’s finding that the claims *recite* an abstract idea.

D.2. 2019 Revised Guidance Step 2A, Prong 2

Having determined that claims 32, 42, and 52 *recite* an abstract idea, we now turn to whether claims 32, 42, and 52 are *directed to* that abstract idea, or instead integrate the judicial exception into a practical application.

Appellant contends:

In the analysis set forth in the Office Action, *the Examiner has also failed to evaluate the claim as a whole*. . . . Here, the Office Action does not provide any convincing explanation on how the pending claims, as a whole, are directed to an abstract idea. Instead, the Office repeats its mistake from Step 2A, *overgeneralizing the claims and drawing conclusions based on the overgeneralization*. . . .

. . . The Examiner has cited multiple cases, all of which included claims that are readily distinguishable from the claims currently pending. For example, the Examiner repeatedly cites *Electric Power Group*, *Ultramercial*, and *buySafe*. In *Electric Power Group*, the claims were directed to only to “collecting information, analyzing it, and displaying certain results of the collection and analysis”. *In contrast, the pending claims include steps that go far beyond collection, analysis, and display. The claims contain technical components performing operations such as transmitting orders, executing orders, and performing updates*. With respect to *Ultramercial*, the claims in *Ultramercial* were devoid of computing components and were not technical in nature. *In contrast, the pending claims contain multiple computing components and are indeed technical in nature*. Likewise, in *BuySafe*, the claims included generic computer functionality only. Specifically, the word “computer” was included in a claim that was directed to an otherwise commercial practice. *In contrast, the pending claims are fraught with particular and specific computer functionality required to perform the claimed method and specific system*

***components that go far beyond “generic” computing components.***

Appeal Br. 16–17 (Appellant’s citations omitted; panel’s emphasis added).

We are not persuaded by Appellant’s argument. In addition to reciting a method of trading financial instruments, claim 32 further recites:

[1] the order submission application is stored “in a computer memory”;

[2] the trading of financial instruments is facilitated by “executing programming of the order submission application with at least one computer processor”;

[3] the real time updates are “transmitted over the Internet from the financial instrument server through a dynamic data exchange interface coupled to the order submission application and an Internet browser, the dynamic data exchange interface enabling the financial instrument server and the order submission application to share data”;

[4] “the order submission application automatically assigning an order identifier to the order when the order is generated by the order submission application”;

[5] the order is transmitted “through the dynamic data exchange interface over the Internet”;

[6] “saving the order identifier at the financial instrument server and generating a new and unique server identifier for placement in the order to a trading engine”;

[7] “correlating, at the financial instrument server, the order identifier with the server order identifier upon receipt of an update from the trading engine”; and

[8] “updating the order submission application by transmitting updates from the financial instrument server over the Internet upon execution of the order”.

Independent claims 42 and 52 recite similar elements. Consistent with the Examiner’s findings, the recitation of “a computer memory,” “at least one computer processor,” “Internet,” “a dynamic data exchange,” and “an Internet browser,” merely generally link the method of trading financial instruments recited in claim 32 to a computer to perform the method of trading financial instruments. *See* Ans. 3–4, 8–9.

We further agree with the Examiner that there is no indication (either in the claims or in Appellant’s Specification) that the elements of claims 32, 42, and 52 (whether considered individually or in combination) improve the functioning of a computer or any other technology. *See* Ans. 8. As correctly found by the Examiner, the claimed invention merely provides a business solution to a business problem, where the implementation of the business solution on a general-purpose computer improves a business problem related to the trading of financial instruments. *See* Ans. 10.

Further, we conclude the recitations of “automatically assigning an order identifier to the order,” “saving the order identifier,” “generating a new and unique server identifier,” “correlating . . . the order identifier with the server order identifier,” and “transmitting updates . . . upon execution of the order,” merely recite required electronic recordkeeping functionality to facilitate the trading of financial instruments. Such electronic recordkeeping is similar to computer-implemented functionality, that courts have previously held constitutes insignificant extra-solution activity that does not provide significantly more than the underlying abstract idea.” *See Alice*, 573 U.S. at 225 (“Using a computer to create and maintain ‘shadow’ accounts



amounts to electronic recordkeeping—one of the most basic functions of a computer.”).

Appellant further contends:

Appellant directs the Board's attention to the Federal Circuit decision in *Trading Technologies International Inc., v. CQG, Inc.* . . . ***has recognized that specific technologic modifications to solve a problem or improve the functioning of a known system generally produce patent-eligible subject matter***”, citing *DDR Holdings LLC v. Hotels.com. L.P.* Similarly, ***the pending claims require a real time computerized trading system with no pre-existing analog. The order submission application, DDE server, financial instruments server, and trading engines are connected in a very specific manner and use a particular algorithm to exchange information that improves the speed and tracking capability of orders.***

. . . As defined in Meriam Webster’s dictionary, an algorithm is “a set of steps that are followed in order to solve a mathematical problem or to complete a computer process.” ***With respect to the specification, paragraphs 25-49, for example, are entirely devoted to the disclosure of algorithms. The algorithms are further expressed in claim language in the pending claims.***

Additionally, the Federal Circuit in *DDR Holdings* held that claims that address a business challenge (e.g., of retaining website visitors) are patent eligible under 35 U.S.C. §101. . . . The claimed invention here is analogous to the claims in *DDR Holdings* that were found to recite patent-eligible subject matter ***because the claims address the specific business problem of effectively automatically trading financial instruments of various types online using a submission application, dynamic data exchange interface and financial instrument server communicating with one another over a network.*** Indeed, as in

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*DDR Holdings*, the claimed solution is necessarily rooted in computer technology.

Appeal Br. 21–23 (Appellant’s citations omitted; panel’s emphasis added).

Appellant’s argument that the claims are similar to the claims at issue in *Trading Technologies International, Inc. v. CQG, Inc.*, 675 F. App’x 1001 (Fed. Cir. 2017) is not persuasive. The scope of the claims is not commensurate with the argued improvement of increased speed and tracking capability of orders. More specifically, the claimed “order submission application,” “dynamic data exchange,” “financial instrument server,” and “trading engine” are not recited at a level of specificity that address and resolve the specifically identified problem of reduced speed and tracking capability in prior online trading systems. In contrast, in *Trading Technologies*, the court determined the claims did not “simply claim displaying information on a graphical user interface” but rather “require[d] a specific, structured graphical user interface paired with a prescribed functionality directly related to the graphical user interface’s structure,” and it was the specifically structured graphical user interface with prescribed functionality that “addressed . . . and [resolved] a specifically identified problem in the prior state of the art.” *Trading Technologies*, 675 F. App’x at 1004.

Appellant’s argument that the claims recite, and the Specification discloses, a specific algorithm is also not persuasive. While the claims do recite, and the Specification does disclose, steps of an algorithm performed by the at least one processor, Appellant does not sufficiently explain how the recited steps achieve the argued improvement of increased speed and order tracking capability beyond the mere linking of the method of trading

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financial instruments to a computer to perform the method of trading financial instruments.

Further, we are not persuaded by Appellant’s argument that the claims are similar to the claims at issue in *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1257 (Fed. Cir. 2014). Unlike the claims at issue in *DDR Holdings*, the claims fail to recite the technical details that distinguish the claimed process of trading financial instruments from prior processes of trading financial instruments.

Appellant additionally contends:

The Interim Guidance states that meeting one of the following would “appear to be required to meet patentability for an abstract idea”: “. . . [3] *meaningful limitations beyond generally linking the use of an abstract idea to a particular technological environment; [4] applying the judicial exception with, or by use of, a particular machine.*” . . .

. . . .

. . . [T]he claims provide meaningful limitations beyond generally linking the use of an allegedly abstract idea to a particular technological environment, thereby fulfilling condition (3) above. . . .

. . . .

*Furthermore, the claims satisfy condition (4) above, by applying the judicial exception with, or by use of, a particular machine.* With respect to both the system and method claims, the particular machine imposes a meaningful limit on the scope of the claim and the use of the machine is not directed to insignificant extra-solution activity.

Appeal Br. 23–26 (Appellant’s citations omitted; panel’s emphasis added).

These arguments are not persuasive either. We agree with the Examiner that the recited “computer memory,” “computer processor,” “Internet,” “dynamic data exchange,” and “Internet browser” are recited at a

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high level of generality and do not either go beyond linking the method of trading financial instruments to a technological environment or apply the method of trading financial instruments with a specific machine. *See* Ans. 14–15.

In light of the above, and consistent with the Examiner’s determinations, we conclude that claims 32, 42, and 52 do not integrate the judicial exception into a practical application. We determine claims 32, 42, and 52 do not recite:

- (i) an improvement to the functioning of a computer;
- (ii) an improvement to another technology or technical field;
- (iii) an application of the abstract idea with, or by use of, a particular machine;
- (iv) a transformation or reduction of a particular article to a different state or thing; or
- (v) other meaningful limitations beyond generally linking the use of the abstract idea to a particular technological environment.

*See* MPEP §§ 2106.05(a)–(c), (e)–(h). We agree with the Examiner that claims 32, 42, and 52 are ***directed to*** a judicial exception, and do not integrate the judicial exception into a practical application.

### D.3. 2019 Revised Guidance Step 2B

Appellant contends:

The Interim Guidance states that meeting one of the following would “appear to be required to meet patentability for an abstract idea”: . . . “[6] ***adding a specific limitation other than what is well-understood, routine and conventional in the field, or adding unconventional steps that confine the claim to a particular useful application.***”

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It is worth noting that *the claims have not been rejected under 35 U.S.C. §§102 or 103 and therefore contain multiple steps that are not routine or conventional in the field, thereby satisfying condition (6).*

Appeal Br. 23–24 (Appellant’s citations omitted; panel’s emphasis added).

Consistent with the Examiner’s findings, we agree with the Examiner that the claims merely recite generic computer structure that serves to perform generic computer functions that are well-understood, routine, and conventional activities previously known to the relevant industry. *See* Ans. 3–4, 9–11. As the Examiner correctly found, evidence of the well-understood, routine, and conventional nature of the claimed elements can be found in Appellant’s Specification, which describes that the claimed system is executed on a general-purpose computer and includes any electronic spreadsheet application known to a person of ordinary skill in the art. *See* Ans. 5 (citing Spec. ¶¶ 17–18).

Appellant’s argument that the lack of rejections under 35 U.S.C. §§ 102 and 103 is evidence that the claims contain steps that are not well-understood, routine, or conventional is not persuasive. This argument conflates the anticipation test under 35 U.S.C. § 102 and the obviousness test under 35 U.S.C. § 103 with the patent-eligibility test under 35 U.S.C. § 101. As the Examiner correctly found, these tests are separate and distinct tests, and passing one or both of the anticipation and obviousness tests does not equate to passing the patent-eligibility test. *See* Ans. 14.

In light of the above, and consistent with the Examiner’s determinations, we determine that beyond the abstract idea, claims 32, 42, and 52 do not recite:

- (vi) a specific limitation other than what is well-understood, routine, conventional activity in the field or

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unconventional steps that confine the claim to a particular useful application.

See MPEP § 2106.05(d).

#### E. Other § 101 Arguments

Appellant also contends:

The Examiner cannot dispute that the present claims, if allowed, *pose no risk of preemption for the field of “trading financial instruments”, or any other field of human endeavor.*

...

Further, even if the claims are directed to an abstract idea as alleged by the Office, then *the particular, detailed steps in the remainder of the claim are certainly enough to escape the conclusion that the claims would preempt an entire field.*

Appeal Br. 18–19 (Appellant’s citations omitted; panel’s emphasis added).

This argument is not persuasive. The Federal Circuit has made clear that “the absence of complete preemption does not demonstrate patent eligibility” of a claim. *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015); *see also* Ans. 11–12.

Appellant further contends:

Additionally, Appellant respectfully submits that the Examiner’s approach *amounts to a de facto ban on software patents.*

... The Examiner’s application of the Mayo/Alice framework, however, has *virtually guaranteed a ban of any and all software and business method patents.* By impermissibly stripping the claim in question of all known technological elements and/or distilling the claimed invention to an oversimplified concept (rather than treating the entire claim as a whole ...), *the Examiner has ensured that Step 2A of the Mayo/Alice framework always results in finding the software or business method claim as being directed to an abstract idea,*

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***and that Step 2B amounts to nothing more than a simple search for hardware improvement.***

Appeal Br. 20–21 (Appellant’s citations omitted; panel’s emphasis added);  
*see also* Reply Br. 4–5.

This argument is not persuasive either. For the reasons previously discussed, the Examiner’s findings are consistent with the framework described in the 2019 Revised Guidance.

### CONCLUSION

The Examiner has not erred in rejecting claims 32–36, 40–44, and 46–58 as failing to recite patent-eligible subject matter under 35 U.S.C. § 101.

The Examiner’s rejection of claims 32–36, 40–44, and 46–58 as failing to recite patent-eligible subject matter under 35 U.S.C. § 101 is **affirmed**.

### DECISION SUMMARY

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
32–36, 40–44, 46–58	101	Eligibility	32–36, 40–44, 46–58	

### TIME PERIOD FOR RESPONSE

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

**AFFIRMED**