UNITED STATES PATENT AND TRADEMARK OFFICE

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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 ROBERT W. ASH
_____

Appeal 2019-002131
Application 14/324,535
Technology Center 3600
_____

Before MURRIEL E. CRAWFORD, PHILIP J. HOFFMANN, and
BRADLEY B. BAYAT, *Administrative Patent Judges.*

CRAWFORD, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant[1] appeals from the
Examiner's decision to reject claims 1–10 and 12–21. We have jurisdiction
under 35 U.S.C. § 6(b).

We AFFIRM.

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

CLAIMED SUBJECT MATTER

The claims are directed to a financial transaction approval system and method. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method of processing a retail sales transaction, the method comprising:

processing a plurality of items for purchase using a point-of-sale terminal that is part of a transaction approval system at a point of sale in a retail store, wherein:

processing the plurality of items for purchase includes using the transaction approval system to determine associated price information for each item included in the plurality of items for purchase based on identifiers associated with the plurality of items for purchase,

processing the plurality of items for purchase begins when information regarding an identifier of a first one of the plurality of items for purchase is entered into the point-of-sale terminal, and

processing the plurality of items for purchase ends when information regarding the identifiers associated with the plurality of items for purchase has been entered into the point-of-sale terminal and all the associated price information for each item included in the plurality of items for purchase has been determined;

after processing the plurality of items for purchase begins and before processing the plurality of items for purchase ends, providing an offer, via the transaction approval system, to electronically receive from a consumer at least one of an identification of a financial account that will be used by the consumer to pay for the plurality of items for purchase and approval from the consumer to charge the total cost to the financial account;

after processing the plurality of items for purchase ends, determining the total cost of the plurality of items for purchase using the point-of-sale terminal; and

if the consumer did not provide one or more of identification of the financial account and approval to charge to

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the financial account in response to the offer before the total cost is determined, then, after determining the total cost of the plurality of items for purchase, using the transaction approval system to electronically prompt the consumer for and to electronically receive from the consumer at least one of the identification of the financial account that will be used by the consumer to pay for the plurality of items for purchase and approval from the consumer to charge the total cost to the financial account.

REJECTIONS

The Examiner rejects claims 1–10 and 12–21 under 35 U.S.C. § 101 as directed to ineligible subject matter.

The Examiner rejects claims 1–10 and 12–21 under 35 U.S.C. § 103(a) as unpatentable over Millikan (US 2002/0170782 A1, published Nov. 21, 2002) and "D.C. AREA SAFEWAY STORES LOOK FOR INCREASE IN SALES VOLUME AND REVENUE WITH CARDS," *Card News*, Vol. 6, No. 25, Dec. 30, 1991 ("Card News").

OPINION

Rejection under 35 U.S.C. § 101

Principles of Law

An invention is patent-eligible if it claims a "new and useful process, machine, manufacture, or composition of matter." 35 U.S.C. § 101. However, the Supreme Court has long interpreted 35 U.S.C. § 101 to include implicit exceptions: "[l]aws of nature, natural phenomena, and abstract ideas" are not patentable. *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 Supreme Court's two-step framework, described in *Mayo*

and *Alice*. *Id.* at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–77 (2012)). In accordance with that framework, we first determine what concept the claim is "directed to." *See 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, 69 (1972)). Concepts determined to be patent eligible include physical and chemical processes, such as "molding rubber products" (*Diamond v. Diehr*, 450 U.S. 175, 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 (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 Supreme Court held that "[a] claim drawn to subject matter otherwise statutory does not become nonstatutory simply because it uses a mathematical formula." *Diehr*, 450 U.S. at 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 Supreme Court also indicated that a claim "seeking patent

protection for that formula in the abstract . . . is not accorded the protection of our patent laws, . . . and this principle cannot be circumvented by attempting to limit the use of the formula to a particular technological environment." *Id.* (citing *Benson* and *Flook*); *see, e.g., id.* at 187 ("It is now commonplace that an *application* of a law of nature or mathematical formula to a known structure or process may well be deserving of patent protection.").

If the claim is "directed to" an abstract idea, we turn to the second step of the *Alice* and *Mayo* framework, where "we must examine the elements of the claim to determine whether it contains an 'inventive concept' sufficient to 'transform' the claimed abstract idea into a patent-eligible application." *Alice*, 573 U.S. at 221 (quotation marks omitted). "A claim that recites an abstract idea must include 'additional features' to ensure 'that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].'" *Id.* (quoting *Mayo*, 566 U.S. at 77). "[M]erely requir[ing] generic computer implementation[] fail[s] to transform that abstract idea into a patent-eligible invention." *Id.*

The PTO published revised guidance on the application of § 101. *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019) ("Guidance"). Under the Guidance, we first look to whether the claim recites:

> (1) any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human activity such as a fundamental economic practice, or mental processes); and
> (2) additional elements that integrate the judicial exception into a practical application (*see* Manual of Patent Examining Procedure ("MPEP") § 2106.05(a)–(c), (e)–(h)).

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

> (3) adds a specific limitation beyond the judicial exception that
> is not "well-understood, routine, conventional" in the field (*see*
> MPEP § 2106.05(d)); or
> (4) simply appends well-understood, routine, conventional
> activities previously known to the industry, specified at a high
> level of generality, to the judicial exception.

See Guidance.

Claims 1–5, 7–10, and 12–21

The Examiner determines the claims are "directed to a system and
method for financial transaction approval." Final Act. 6; *see also* Answer 4
("directed to methods and systems processing a retail sales transaction
further comprising prompting for and receiving identification of a financial
account and/or approval information from a consumer" and "the collection
of information to generate a request for proposal and a subsequent response
to a request for proposal, to facilitate shopping for a service provider using a
graphic user interface over a network"). The Examiner finds the
"transaction approval system" and "point of sale terminal," are "routine,
conventional, and well-understood" computer elements, that that "the
generically-recited computer elements (e.g., the elements that can potentially
include 'significantly more' than the underlying abstract idea) perform
functions that would be routine, conventional, and well-understood to one of
ordinary skill in the computer art." Final Act. 8–9. In addition, the
Examiner identifies four limitations of claim 1 that are "considered to be at
least a part of the abstract idea." *Id.* at 6.

The Appellant argues claim 1 on behalf of all pending claims, except claim 6. Appeal Br. 16. We select claim 1 as representative. *See* 37 C.F.R. § 41.37(c)(1)(iv).

The claim "relates to a method of processing a retail sales transaction including processing a plurality of items for purchase," "providing an offer, via the transaction approval system, to electronically receive from a consumer at least one of an identification of a financial account that will be used by the consumer to pay for the plurality of items for purchase and approval from the consumer to charge the total cost to the financial account," and "determining the total cost of the plurality of items." Spec. ¶ 3. In other words, the claim gathers price information for items being purchased, totals the prices, and asks for payment information. The Appellant suggests the claim is directed to "conduc[t]ing a point of sale transaction." Appeal Br. 20.

Claim 1 recites "processing a plurality of items for purchase," which limitation itself includes three "processing" limitations, which recite that the method operates "to determine associated price information for each item," starting with the first item and ending with the last item. The Specification does not describe how price information for each item is "determined," but describes that "the product codes of the purchases are entered into point-of-sale terminal." Spec. ¶ 18 (cited at Appeal Br. 6). This is essentially a data-gathering step that looks up the price of each scanned item using the entered product code.

Between the first and last item scanned, the claimed method recites "providing an offer, via the transaction approval system, to electronically receive from a consumer at least one of an identification of a financial

account that will be used by the consumer to pay for the plurality of items for purchase and approval from the consumer to charge the total cost to the financial account." The Specification describes that this step operates by "display[ing] a message giving the consumer an option to initiate the financial transaction." Spec. ¶ 19 (cited at Appeal Br. 6). This is a request to gather information by displaying a message.

After scanning is complete, the method determines the "total cost" of the items scanned for purchase. How the total cost is determined is not described in the Specification, but we assume it involves a mathematical summation of looked-up prices. *See* Spec. ¶ 24 (cited at Appeal Br. 7).

Applying Prong One of Revised Step 2A of the Guidance, claim 1 *gathers information, totals a cost, and seeks information to complete a purchase transaction.* As such, claim 1 recites the judicial exception of the fundamental economic practice of processing a retail transaction, which is a method of organizing human activity. Guidance at 52; *see also* MPEP §§ 2106.04(a)(2)(I)(A), 2106.04(a)(2)(II)(A–B).

Under Prong Two of Revised Step 2A of the Guidance, we evaluate whether the judicial exception is integrated into a practical application. Guidance at 54. This step involves "[i]dentifying whether there are any additional elements recited in the claim beyond the judicial exception(s)," and "evaluating those additional elements individually and in combination to determine whether they integrate the exception into a practical application." *Id.* at 54–55.

Claim 1 recites a first "processing" limitation, including three "processing" sub-limitations, which amount to no more than data gathering, and which do not receive patentable weight in the analysis, because they

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involve only "insignificant extra-solution activity." *Id.* at 55; *see also* MPEP § 2106.05(g). Claim 1 next recites a limitation for "providing an offer, via the transaction approval system, to electronically receive from a consumer at least one of an identification of a financial account," either "after processing the plurality of items for purchase begins and before processing the plurality of items for purchase ends," or "after determining the total cost of the plurality of items for purchase" (if the consumer did not provide one or more of identification of the financial account and approval before the total cost is determined). As we noted above, these steps involve displaying a message.

The remaining step in the method is "determining the total cost of the plurality of items for purchase using the point-of-sale terminal."

In examining claim 1 for "additional elements" beyond the abstract idea of gathering information, totaling a cost, and seeking information to complete a purchase transaction, (excluding the portions of the claim that are insignificant extra-solution activity), we are left with only two additional elements: "using a point-of-sale terminal," and "using the transaction approval system." This is consistent with the Examiner's findings. *See* Final Act. 8–9. In claim 1, the "transaction approval system" requests financial information and approval from the customer by displaying a message. The "point-of-sale terminal" determines a total cost.

These additional elements do not improve the underlying computers through the acts of displaying messages and calculating totals, because any computer can be used to display messages, or compute numeric totals. *See* Spec. ¶¶ 12–14. In addition, the method is directed to "approving and confirming financial card transactions" (*id.* ¶ 11), and as such the claimed method does not improve another technology. MPEP § 2106.05(a); *see also*

Guidance at 54. Because a particular computer is not required, the claim also does not define or rely on a "particular machine." MPEP § 2106.05(b). Further, the method does not transform matter. *Id.* § 2106.05(c). Instead, the claim gathers information, totals a cost, and seeks approval to complete a retail purchase transaction. As such, the method has no other meaningful limitations (*id.* § 2106.05(e)), and thus merely recites instructions to execute the abstract idea on a computer (*id.* § 2106.05(f)).

Thus, under Prong Two, the method does not integrate the judicial exception into a "practical application." As such, claim 1 is directed to an abstract idea.

Proceeding to Step 2B of the Guidance, we evaluate whether the claim provides an inventive concept. Guidance at 56. We "evaluate the additional elements individually and in combination under Step 2B to determine whether they provide an inventive concept (i.e., whether the additional elements amount to significantly more than the exception itself)." *Id.*

The additional elements, of a "point-of-sale terminal" that totals numeric values, and a "transaction approval system" that displays messages, perform operations that any conventional computer system can accomplish. *See In re Katz Interactive Call Processing Patent Litig.*, 639 F.3d 1303, 1316 (Fed. Cir. 2011) ("Absent a possible narrower construction of the terms 'processing,' 'receiving,' and 'storing,' discussed below, those functions can be achieved by any general purpose computer without special programming.").

Therefore, we conclude that claim 1 recites an abstract idea and does not provide an inventive concept.

Appellant's Arguments as to Claims 1–5, 7–10, and 12–21

Citing *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016), the Appellant argues claim 1 is "drawn to 'a specific implementation of a solution,' that is the specifically ordered method steps identified in claim 1, 'to a problem,' that is the speed at which a retail sales transaction is performed 'using a point-of-sale terminal that is part of a transaction approval system at a point of sale in a retail store.'" Appeal Br. 19.

We are unpersuaded by the Appellant's argument. Unlike the claims here, the claims in *Enfish* recited a "specific improvement to the way computers operate," i.e., an improved database configuration that permitted faster and more efficient searching. *Enfish*, 822 F.3d at 1330-33, 1336. The Federal Circuit has explained that the claims in *Enfish* "did more than allow computers to perform familiar tasks with greater speed and efficiency" and "actually permitted users to launch and construct databases in a new way." *Finjan, Inc. v. Blue Coat Sys., Inc.*, 879 F.3d 1299, 1305 (Fed. Cir. 2018). The Federal Circuit has also explained that the claims in *Enfish* "focused on an improvement to computer functionality itself, not on economic or other tasks for which a computer is used in its ordinary capacity." *Secured Mail Sols. LLC v. Universal Wilde, Inc.*, 873 F.3d 905, 910 (Fed. Cir. 2017).

In contrast, here, prompting a consumer for financial account information and approval, while items are being processed, may improve the business process involved, but does not have an effect on the manner, or speed, with which the "system" displays information or the "terminal" calculates numeric totals.

We are not persuaded by the Appellant's argument that "the specific transaction approval system recited therein [is] not a generic computer." Appeal Br. 19.

All one is able to discern about the "transaction approval system," recited in claim 1, is that it is a "system." The Specification is of little help in understanding the bounds of this claim term, because it merely describes one example embodiment: "Figure 1 illustrates one embodiment of a transaction approval system 10 including a cash register or point-of-sale terminal 12, a financial transaction terminal 14, and a stylus 16." Spec. ¶ 12. Even if we were to import this example into the claim language, it means, for example, that the claimed method could be performed entirely on a point-of-sale terminal, since it may be a component of the "transaction approval system." All one can discern from the Specification about the claimed "point-of-sale terminal" is that it "includes a keyboard 30, a scanner 32, a monitor 34, and a printer 36," and alternatively, "includes a radio frequency identification (RFID) device." *Id.* ¶ 14. These exemplary descriptions in the Specification do not define the devices beyond attributes that they share with a general-purpose computer.

The Appellant argues claim 1 is not an abstract idea because it "does not seek to 'tie-up' the entire abstract idea." Appeal Br. 21; *see also id.* at *23–24*. We are unpersuaded, because, "[w]hile preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility." *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015); *see also OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362-63 (Fed. Cir. 2015) ("[T]hat the claims do not preempt all price optimization or may be limited to price optimization in the e-commerce setting do not make them any less abstract."). And, "[w]here a patent's claims are deemed only to disclose patent ineligible subject matter under the *Mayo* framework, as they are in

this case, preemption concerns are fully addressed and made moot." *Ariosa*, 788 F.3d at 1379.

We are also unpersuaded by the Appellant's arguments that the "offer" and "prompt" portions of claim 1 each "takes the claim scope significantly beyond the identified abstract ideas," basically because they "differ from general prior art or any abstract idea therein as well as from any prior art cited." Appeal Br. 22–23. Even unconventional abstract ideas are still unpatentable. *See SAP America, Inc. v. Investpic, LLC*, 890 F.3d 1016, 1018 (Fed. Cir. 2018). "What is needed is an inventive concept in the non-abstract application realm." *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1168 (Fed. Cir. 2018). The cited portions of the claim are part of the abstract idea of *gathering information, totaling a cost, and seeking approval to complete a purchase transaction*, which are part of a commercial transaction, and thus an abstract method of organizing human activity. In other words, the "specifically recited details [that] take claim 1 well beyond any general abstract idea," according to the Appellant (Appeal Br. 23–24) are part of the abstract idea itself.

The Appellant has thus not demonstrated error in the Examiner's rejection of claim 1. For this reason, we sustain the rejection of 1–5, 7–10, and 12–21 under 35 U.S.C. § 101.

Claim 6

The Appellant argues:

claim 6 recites additional particulars of the transaction approval system stating that the transaction approval system includes "a financial transaction terminal in electrical communication with the point-of-sale terminal" and having "a financial transaction terminal display facing in a different direction than a point-of-sale terminal display" (*Appendix* X, p. 43, 1. 6–9). This

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> additional recitation of the specific hardware used to perform the claimed method take claim 6 beyond any general abstract idea, with even more claim particulars being drawn to use or the specifically recited hardware.

Appeal Br. 25. The Appellant further asserts that using the "financial transaction terminal" to display the claimed "offer" and "prompt," while "simultaneously visually indicating" additional information, adds "significantly more" than the identified abstract idea of claim 1. *Id.* at 25–26.

We are unpersuaded by the Appellant's arguments.

The Specification describes that "Financial transaction terminal 14 is a financial transaction card reader in communication with at least one financial institution network." Spec. ¶ 15. Also, "Financial transaction terminal 14 additionally includes a user interface, monitor, or touch screen 48 on a top surface 45 of financial transaction terminal 14." *Id.* ¶ 17.

The Appellant's argument is essentially that, because messages are displayed on a "card reader" device with display, connected to a network, the act of gathering information, totaling a cost, and seeking approval to complete a purchase transaction is not an abstract commercial transaction.

In the context of claim 6, merely displaying messages on a device, capable of receiving input via a "card reader," is not significantly more than the abstract idea. The communicating of this information, for example, could be communicated verbally by a human speaking, or through posted signs. *See Credit Acceptance*, 859 F.3d 1044, 1055 (Fed. Cir. 2017) ("Our prior cases have made clear that mere automation of manual processes using generic computers does not constitute a patentable improvement in computer technology."); *see also Bancorp Services, L.L.C. v. Sun Life Assurance Co.*

of Canada (U.S.), 687 F.3d 1266, 1278 (Fed. Cir. 2012) (A computer "employed only for its most basic function . . . does not impose meaningful limits on the scope of those claims."). The Appellant's identified improvements are improvements to the abstract idea, not improvements to a technology or computer functionality.

For these reasons, we sustain the rejection of claim 6 under 35 U.S.C. § 101.

Rejection under 35 U.S.C. § 103(a)

The method concludes with a conditional step, which depends on "if the consumer did not provide one or more of identification of the financial account and approval." In the condition that the consumer did *not* provide the information requested in the displayed message, the system "prompt[s]" the consumer for the same information. In the condition that the consumer *did* provide the identification and approval, the last recited step is not performed.

Conditional steps employed in a method claim need not be found in the prior art if, under the broadest reasonable construction, the method need not invoke the steps. *Ex parte Schulhauser*, No. 2013-007847, 2016 WL 6277792, at *3-6 (PTAB April 28, 2016) (concluding the broadest reasonable interpretation of a claim encompassed situations in which conditional method steps "need not be reached") (precedential). The final-recited step involves displaying a message to ask to gather information, similar to the corresponding step during processing of items. Spec. ¶ 28.

Independent Claim 1 and Dependent Claims 2–5, 12, 13, and 21

The Appellant argues:

> Millikan teaches away from "providing an offer . . . to electronically receive from a consumer at least one of an identification of a financial account . . . and approval from the consumer to charge the total cost to the financial account" "after processing the plurality of items for purchase begins and before processing the plurality of items for purchase ends" . . . as it would unnecessarily interrupt the consumer's processing of the items for purchase (i.e., it would cause the consumer to stop processing the plurality of items for purchase to address the offer and then return to processing the plurality of items for purchase), thereby, delaying or undesirably lengthening the checkout process, which is against the very purpose of Millikan to save checkout time.

Appeal Br. 30.

We are unpersuaded by the argument, because we discern no discussion in Millikan that discourages asking for a payment account while processing items. Appellant has not identified where Millikan actually criticizes, discredits, or otherwise discourages the Appellant's argued limitations. *See In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2004); *DePuy Spine, Inc. v. Medtronic Sofamor Danek, Inc*., 567 F.3d 1314, 1327 (Fed. Cir. 2009) ("A reference does not teach away, however, if it merely expresses a general preference for an alternative invention but does not 'criticize, discredit, or otherwise discourage' investigation into the invention claimed.") (*citing Fulton*).

The Appellant's contention that interrupting scanning would cause "delaying or undesirably lengthening the checkout process" is merely attorney argument, without supporting evidence. In this regard, a consumer could conclude that interrupting the processing of items could lead to an

overall shorter checkout process, if it saves processing time *after* processing, because the system had more time to process the payment information.

For the same reasons, we are unpersuaded by the Appellant's argument, directed to Card News, that "a method step for providing a card during item processing in a clerk-assisted checkout does not lend itself to inclusion in the self-checkout method of Millikan since, as described above, it would undesirably delay the process of Millikan." Appeal Br. 30.

We are also unpersuaded by the Appellant's argument that the combination of Millikan and Card News "fails to teach an additional second such option/prompt as recited in claim 1" (the last limitation which begins with "if"). Appeal Br. 31–32. The argument fails because it is directed to a conditional step for which the Examiner, under the broadest reasonable construction, is not required to demonstrate is disclosed or suggested in the art. *See Ex parte Schulhauser,* 2016 WL 6277792 at *3-6.

For these reasons, we sustain the rejection of claims 1–5, 12, 13, and 21 as obvious.

Dependent Claim 6

Claim 6 recites, in part, "the financial transaction terminal having a financial transaction terminal display facing in a different direction than a point-of-sale terminal display of the point-of-sale terminal."

The Examiner finds this limitation is disclosed at paragraphs 48 and 51 of Millikan. Final Act. 12.

The Appellant argues the "combination of references cited in the rejection of claim 6 fails to teach" the display-facing feature of claim 6. Appeal Br. 33.

Although Millikan discloses that the "particular form of the security/assistance pole **40** is readily adaptable to the particular configuration of the self-checkout stations **1**, the convenience store's floor plan, and logistical common sense" (Millikan ¶ 48), we do not discern in the cited paragraphs any statement about the direction a display faces. The Examiner does not respond to this argument. *See* Answer 5–7.

We thus agree with the Appellant, because the Examiner has not demonstrated that the claim language is disclosed in, or suggested by, the cited prior art. For this reason, we do not sustain the obviousness rejection of claim 6.

Independent Claim 14 and Dependent Claims 16–18

The Appellant advances arguments that are essentially the same as the arguments raised in claim 1, as to alleged teaching away, and failure to disclose all the conditional steps. Appeal Br. 35–36. We find them unpersuasive for the same reasons as for claim 1. Therefore, we sustain the rejection of claims 14 and 16–18 as obvious.

Dependent Claim 15

Claim 15 recites:

> wherein presenting the consumer the opportunity to provide the final approval to charge the total price for all of the plurality of goods to the financial account is preformed simultaneously with using the financial transaction terminal to visually indicate to the consumer that the total price has not yet been determined.

Claim 15 thus displays information at the same time it displays a message asking for final approval. The information displayed is recited as being "that the total price has not yet been determined." This information has no effect on the *claimed* process, however, and as such is essentially printed matter, merely displayed for the consumer. Our reviewing court has held that nonfunctional descriptive material cannot lend patentability to an invention that would have otherwise been anticipated by the prior art. *In re Ngai*, 367 F.3d 1336, 1339 (Fed. Cir. 2004). *Cf. In re Gulack*, 703 F.2d 1381, 1385 (Fed. Cir. 1983) (noting that when descriptive material is not functionally related to the substrate, the descriptive material will not distinguish the invention from the prior art in terms of patentability). *King Pharm., Inc. v. Eon Labs, Inc.*, 616 F.3d 1267, 1279 (Fed. Cir. 2010) ("[T]he relevant question is whether 'there exists any new and unobvious functional relationship between the printed matter and the substrate.'") (citations omitted). We thus construe the claim to mean simultaneously displaying two different instances of data.

The Appellant argues Millikan fails to disclose "'simultaneously' presenting the consumer the opportunity to provide the final approval to charge the total price while visually indicating 'to the consumer that the total price has not yet been determined' as recited." Appeal Br. 37.

The Examiner cites paragraphs 43, 50, and 51 of Millikan, which describe "touch screen display 12." However, the ability to display information simultaneously with this display is better demonstrated at paragraphs 68–69. Millikan discloses "touch screen display **12** may then displays a series of prompts," and "may display a virtual 'help key' **51** . . .

the touch screen display **12** displays the help key **51** during some or all of the various stages of the checkout process." Millikan ¶¶ 68–69.

We thus sustain the rejection of claim 15 as obvious.

Independent Claim 19

The Appellant's arguments, related to disclosing both opportunities to provide a final approval, and simultaneous display of information, essentially repeat the arguments directed to claims 1 and 15. Appeal Br. 37–38. We find them unpersuasive for the same reasons as claims 1 and 15. Therefore, we sustain the rejection of claim 19 as obvious.

Dependent Claim 20

Claim 20 recites language substantially identical to that of dependent claim 15, and the arguments advanced essentially repeat the arguments of claim 15. Appeal Br. 38–39. We are unpersuaded, for the same reasons as for claim 15. Therefore, we sustain the rejection of claim 20 as obvious.

CONCLUSION

The Examiner's decision to reject claims 1–10 and 12–21 is AFFIRMED.

DECISION SUMMARY

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–10, 12–21	101	Eligibility	1–10, 12–21	
1–10, 12–21	103(a)	Millikan, Card News	1–5, 7–10, 12–21	6
Overall Outcome			1–10, 12–21	

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