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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JOHN NAFEH and KENTON K. YEE

Appeal 2019-002442
Application 13/185,441¹
Technology Center 3600

Before JOHN A. EVANS, JOHN P. PINKERTON, and
MICHAEL M. BARRY, *Administrative Patent Judges*.

PINKERTON, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 3, 5–8, 12, 21, 22, and 24, which are all of the claims pending in this application. Claims 1, 2, 4, 9–11, 13–20, and 23 are canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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 North American Derivatives Exchange, Inc. (“Nadex, Inc.”). Appeal Br. 3.

STATEMENT OF THE CASE

Introduction

Appellant generally describes the disclosed and claimed invention as relating to “a method and apparatus for risk management and to a method and apparatus for establishing and maintaining a market for initial and secondary trading in risk management instruments.” Spec. ¶ 2.²

Independent claim 22 is illustrative of the subject matter on appeal and reads as follows:

22. A redundant and load sharing system comprising:

two separate systems at a single location operating on a same switched high speed local area network, each separate system further comprising:

a means for establishing a contract trading system electronically accessible by traders, the trading system including a plurality of trading accounts having encrypted passwords, each trader on the trading system being associated with at least one of the plurality of trading accounts;

a means for establishing on the trading system, at least two contracts designated contract “A” and contract “B”, where contract “A” pays off a fixed nonzero monetary sum if a state “s1” occurs on an expiration designated “T” and contract “B” pays off the fixed nonzero monetary sum if a state “s2” occurs on the expiration designated “T”, and where contract “A” pays off a zero sum if the state “s2” occurs on the expiration designated “T” and contract “B” pays off the zero sum if the state “s1” occurs on the expiration designated “T”, and where state “s1” and “s2” are each mutually exclusive of each other and

² Our Decision refers to the Final Office Action mailed October 3, 2017 (“Final Act.”), Appellant’s Appeal Brief filed October 26, 2018 (“Appeal Br.”) and Reply Brief filed February 1, 2019 (“Reply Br.”), the Examiner’s Answer mailed Dec. 6, 2018 (“Ans.”), the original Specification filed July 18, 2011 (“Spec.”), and Provisional Patent Application No 60/284,051 filed April 16, 2001 (“051 Prov.”).

together represent all possible outcomes at the expiration designated “T”, and where the fixed nonzero monetary sum is known when the at least two contracts bundle are established;

a means for selling over the trading system, at least one of the contracts;

a means for settling the at least one of the contracts against the trading account of the trader of the at least one of the contracts; and

a means for assessing a transaction fee for at least one of the steps of selling or settling of the at least one of the contracts.

Appeal Br. 19 (Claims App.).

Rejection on Appeal

Claims 3, 5–8, 12, 21, 22, and 24 stand rejected under 35 U.S.C. § 101 as being directed to a judicial exception without significantly more. Final Act. 2–5.

ANALYSIS

A. Applicable Law

Section 101 of the Patent Act provides that “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof” is patent eligible. 35 U.S.C. § 101. But the Supreme Court has long recognized an implicit exception to this section: “[l]aws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014) (quoting *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)). To determine whether a claim falls within one of these excluded categories, the Court has set out a two-part framework. The framework requires us first to consider whether the claim is “directed to one of those patent-ineligible concepts.” *Alice*, 573 U.S. at 217. If so, we then examine “the elements of [the] claim both individually and ‘as an ordered combination’ to determine

whether the additional elements ‘transform the nature of the claim’ into a patent-eligible application.” *Alice*, 573 U.S. at 217 (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 78, 79 (2012)). That is, we examine the claim for an “inventive concept,” “an element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.’” *Alice*, 573 U.S. at 217–18 (alteration in original) (quoting *Mayo*, 566 U.S. at 72–73).

The Patent Office has issued guidance about this framework. *See 2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Revised Guidance”).³ Under the Revised Guidance, to decide whether a claim is directed to an abstract idea, we evaluate whether the claim (1) recites one of the abstract ideas listed in the Revised Guidance (“Prong One”) and (2) fails to integrate the recited abstract idea into a practical application (“Prong Two”). *See Revised Guidance*, 84 Fed. Reg. at 51, 54. If the claim is directed to an abstract idea, as noted above, we then determine whether the claim has an inventive concept. The Revised Guidance explains that when making this determination, we should consider whether the additional claim elements add “a specific limitation or combination of limitations that are not well-understood, routine, conventional activity in the field” or “simply append[] well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality.” *Revised Guidance*, 84 Fed. Reg. at 56.

³ *See also* USPTO, *October 2019 Patent Eligibility Guidance Update* (Oct. 17, 2019), https://www.uspto.gov/sites/default/files/documents/peg_oct_2019_update.pdf.

With these principles in mind, we first analyze whether claim 22 is directed to an abstract idea.

B. Abstract Idea

The Examiner determines that the recited steps of claim 22, excluding the recited computing elements, are directed to the abstract idea of trading and settling contracts. Non-Final Act. 2–3; *see also* Ans. 3 (determining “[t]he claims are drawn to the concept of trading and settling of contracts”). The Examiner also determines that claim 22 is similar to claims found by the courts to be directed to abstract ideas in *Bilski v. Kappos*, 561 U.S. 593 (2010) and *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350 (Fed. Cir. 2014). Final Act. 2–3; Ans. 3–4.

Appellant contends claim 22 is not directed to an abstract idea, but instead to “new uses of a known machine.” Appeal Br. 6; *see also* Reply Br. 6–8. In particular, Appellant asserts claim 22 recites “a computer system in the form of an electronic trading exchange” in which “several different computers or processors are used in combination in a new way to improve the technical operation of electronic trading exchanges.” Appeal Br. 6–7. According to Appellant, claim 22 is similar to the patent-eligible claims in *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1257 (Fed. Cir. 2014). *Id.* at 12; Reply Br. 9. Appellant explains that, like the claims in *DDR*, “[t]he prevention of data loss and optimization of computing resources by” claim 22’s “redundant and load sharing system comprising: two separate systems at a single location operating on a same switched high speed local area network[]” is a “claimed solution[] necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks.” Appeal Br. 12 (citing *DDR*, 773 F.3d at

1257). Appellant further contends that claim 22 is not directed to an abstract idea because the Examiner improperly examined claim 22 “‘in part’ . . . , and not as a whole.” *Id.* at 6.

1. USPTO Step 2A, Prong One

Beginning with Prong One of the first step of *Alice*, we must determine “whether the claims at issue are directed to one of those patent-ineligible concepts,” including the abstract ideas enumerated in the Revised Guidance. *Alice*, 573 U.S. at 217. One of the subject matter groupings identified as an abstract idea in the Revised Guidance is “[c]ertain methods of organizing human activity—fundamental economic principles or practices (including . . . mitigating risk); commercial . . . interactions (including agreements in the form of contracts; . . . sales activities or behaviors; business relations); managing personal behavior or relationships or interactions between people (including . . . following rules or instructions).” *See* Revised Guidance, 84 Fed. Reg. at 52.

Here, apart from the recited systems “operating on a same switched high speed local area network, each . . . system . . . comprising[] a means for” performing each of the recited steps that establish and use a contract trading system accessible “electronically” by traders, we determine claim 22 recites abstract ideas in the category of “methods of organizing human activity.” Claim 22 recites the following steps (with paragraph letters and tabbing added):

- (a) “two separate systems at a single location,”
- (b) “establishing a contract trading system . . . including a plurality of trading accounts having encrypted passwords,

each trader on the trading system being associated with at least one of the plurality of trading accounts,”

(c) “establishing . . . at least two contracts designated contract “A” and contract “B”, where contract “A” pays off a fixed nonzero monetary sum if a state “s1” occurs on an expiration designated “T” and contract “B” pays off the fixed nonzero monetary sum if a state “s2” occurs on the expiration designated “T”, and where contract “A” pays off a zero sum if the state “s2” occurs on the expiration designated “T” and contract “B” pays off the zero sum if the state “s1” occurs on the expiration designated “T”, and where state “s1” and “s2” are each mutually exclusive of each other and together represent all possible outcomes at the expiration designated “T”, and where the fixed nonzero monetary sum is known when the at least two contracts bundle are established,”

(d) “selling . . . at least one of the contracts,”

(e) “settling the at least one of the contracts against the trading account of the trader of the at least one of the contracts,” and

(f) “assessing a transaction fee for at least one of the steps of selling or settling of the at least one of the contracts.”

The functions performed in steps (a)–(f) of claim 22 are “methods of organizing human activity.” In particular, step (a) recites “two separate systems at a single location,” which is akin to the court-identified abstract concept of “backing up data.” *Intellectual Ventures I LLC v. Symantec Corp.*, 725 F. App’x 976, 978 (Fed. Cir. 2018). “[C]ourts have frequently

found that claims directed to copying and storing information for backup purposes are directed to abstract ideas.” *WhitServe LLC v. Dropbox Inc.*, 2019 WL 3342949, at *4 (D. Del. July 25, 2019). Step (b) recites the function of “establishing a contract trading system . . . including a plurality of trading accounts,” which pertains to the long-standing, abstract concepts of forming and managing contracts between parties. *See Revised Guidance*, 84 Fed. Reg. at 52 n.13 (citing *buySAFE*, 765 F.3d at 1355). That the contract trading system uses encrypted passwords is of no moment because “[e]ncryption . . . represents a basic building block of human ingenuity that has been used for hundreds, if not thousands, of years.” *Fid. Nat’l Info. Servs., Inc., Petitioner, v. DataTreasury Corp., Patent Owner.*, No. CBM2014-00021, 2015 WL 1967328, at *8 (PTAB Apr. 29, 2015). Step (c) recites the functions of establishing two contracts on the trading system and setting rules for determining how much each contract “pays off” based on a condition precedent. This step pertains to commercial activities or behaviors based on business rules, which courts have identified as a method of organizing human activity and, thus, an abstract idea. *See Revised Guidance*, 84 Fed. Reg. at 52 n.13.⁴ Although the rules recited in step (c)

⁴ *See also KomBea Corp. v. Noguar L.C.*, 73 F. Supp. 3d 1348, 1352–53 (D. Utah 2014), *aff’d*, 656 F. App’x 1022 (Fed. Cir. 2016) (affirming district court ruling that claims directed to basic sales techniques executed with the aid of a computer to create efficiencies were fundamental economic practices, methods of organizing human activity, and, thus, abstract ideas); *Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1317 (Fed. Cir. 2016) (concluding that claims directed to keeping and applying business rules defining actions to be taken regarding certain received information to be a method of organizing human activity and, thus, an abstract idea); *Parus*, 677 F. App’x at 682 (affirming district court ruling that claims directed to

may be specific, this is not enough to render claim 22 non-abstract, nor does it change our overall understanding of the claim. *See, e.g., Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 716 (Fed. Cir. 2014) (determining that even though “some of the eleven [claim] steps were not previously employed in this art,” that was “not enough—standing alone—to confer patent eligibility upon the claims at issue.”).⁵ Steps (d)–(f) recite selling and settling one or more of the contracts, including the assessment of a transaction fee. These steps are abstract at least because they recite common, long-standing practices in contract formation and management. *See Revised Guidance*, 84 Fed. Reg. at 52, 52 n.13 (citing *buySAFE*, 765 F.3d at 1355).

Based on the analysis above, we determine that claim 22 recites abstract ideas in the “methods of organizing human activity” grouping. *See Revised Guidance*, 84 Fed. Reg. at 52. Here, we note that merely combining several abstract ideas does not render the combination any less abstract. *RecogniCorp, LLC v. Nintendo Co., Ltd.*, 855 F.3d 1322, 1327 (Fed. Cir. 2017) (“Adding one abstract idea . . . to another abstract idea . . . does not render the claim non-abstract.”); *see also FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1094 (Fed. Cir. 2016) (determining the pending claims were directed to a combination of abstract ideas).

Contrary to Appellant’s arguments, the Examiner did not improperly examine claim 22 “*in part*.” Appeal Br. 6. Rather, the Examiner’s § 101 rejection makes clear that the Examiner considered each and every element of claim 22, both individually and as an ordered combination. *See Final Act.*

organizing business functions based on rules provided by a user were a method of organizing human activity, and thus, an abstract idea).

⁵ *See also Netflix, Inc. v. Rovi Corp.*, 114 F. Supp. 3d 927, 942 (N.D. Cal. 2015), *aff’d*, 670 F. App’x 704 (Fed. Cir. 2016).

2–4. More specifically, the first part of the Examiner’s § 101 analysis identifies and considers each of the underlying steps for claim 22 as a basis for describing and explaining the recited abstract ideas. *See* Final 2–3. For example, the Examiner identifies the underlying steps of claim 22—i.e., the two “establishing” steps, and the “selling,” “settling,” and “assessing” steps—and explains that they describe the concept of trading and settling contracts, similar to concepts identified as abstract ideas by the courts, such as risk hedging in *Bilski*, and creating a contractual relationship in *buySAFE*. *See id.* at 3; Ans. 3. The Examiner’s approach here is consistent with USPTO guidance and case law precedent, which support reasonably synthesizing the claim language when identifying a recited abstract idea. *See, e.g., Bilski*, 561 U.S. at 611 (“Claims 1 and 4 in [P]etitioners’ application explain the basic concept of hedging, or protecting against risk. . . . The concept of hedging, described in claim 1 and reduced to a mathematical formula in claim 4, is an unpatentable abstract idea, just like the algorithms at issue in *Benson* and *Flook*.”).⁶ Also consistent with USPTO guidance and case law precedent, the second part of the Examiner’s § 101 analysis identifies the additional elements of claim 22 and considers them both individually and as an ordered combination with the other elements of the claim. *See* Final Act. 2–4. To be sure, the Examiner states that

⁶ *See also Smart Sys. Innovations v. Chicago Transit Auth.*, 873 F.3d 1364, 1371 n.8 (Fed. Cir. 2017) (concluding that the district court did not err in determining that claims covered the abstract concept of paying for a subway or bus ride with a credit card: “[t]he District Court here, as we have instructed, looked to the language of the claims to discern the character of the patent.”).

[t]he claims do not include additional elements that are sufficient to amount to significantly more than the judicial exception . . . when considered both individually and as an ordered combination The claims recite the additional limitations of a redundant and load sharing system comprising two separate systems at a single location operating on a same switched high speed local area network; each separate system comprising a means for establishing a contract trading system electronically accessible by traders, means for selling, means for settling and assessing a transaction fee.

Id. at 3.

Appellant’s assertions that the claims are directed to “new uses of a known machine” and are similar to the claims in *DDR* are also unconvincing. As the Examiner explains, “the focus of the claims here is not on such an improvement in computers as tools, but on certain independently abstract ideas that use computers as tools.” *Ans. 6, see also id.* at 7. The method claim in *DDR* addressed a technological problem “particular to the internet.” *DDR*, 773 F.3d at 1257. Here, however, claim 22 addresses problems relating to contract structure and management and to backing up information to guard against the event of a failure or loss. *See, e.g.,* ’051 Prov. at 1:22–3:14, 20:13–14, 38:22–39:9. Although the claim uses computer and networking technology as a tool to address these problems, the problems themselves are not “particular to” or “necessarily rooted in” a certain technology, nor do their solutions require the use of such technology.

Appellant asserts that the claims “improve the technical operation of electronic trading exchanges,” by using multiple computers over a network in combination “in a new way,” but Appellant does not identify any persuasive evidence in the claims or Specification to support this assertion.

Appeal Br. 7. It is true that the claimed invention’s use of a computer networking system may achieve more accurate results in a shorter amount of time, but “relying on a computer to perform routine tasks more quickly or more accurately is insufficient to render a claim patent eligible.” *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015).⁷

Appellant also asserts that “the claims are novel and non-obvious, but somehow allegedly directed to an abstract idea.” This assertion is unavailing because novelty and non-obviousness are of no relevance in determining patentable subject matter. *See Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1315 (Fed. Cir. 2016) (quoting *Diehr*, 450 U.S. at 188–89) (“‘novelty’ . . . is of *no relevance* in determining . . . patentable subject matter”); *Mayo*, 566 U.S. at 91 (rejecting “the Government’s invitation to substitute §§ 102, 103, and 112 inquiries for the better established inquiry under § 101”).

2. USPTO Step 2A, Prong Two

Because we determine that claim 22 recites an abstract idea, we turn to Prong Two of the first step of the *Alice* analysis. *See Revised Guidance*, 84 Fed. Reg. at 51. In doing so, we consider whether there are any additional elements beyond the recited abstract idea(s) that, individually or in combination, “integrate the [abstract idea(s)] into a practical application,

⁷ *See also Bancorp Servs, L.L.C. v. Sun Life Assur. Co. of Can.*, 687 F.3d 1266, 1278 (Fed. Cir. 2012) (“[T]he fact that the required calculations could be performed more efficiently via a computer does not materially alter the patent eligibility of the claimed subject matter.”); *Alice*, 573 U.S. at 224 (concluding that “the use of a computer to create electronic records, track multiple transactions, and issue simultaneous instructions” was not an inventive concept).

using one or more of the considerations laid out by the Supreme Court and the Federal Circuit.”⁸ *Id.* at 54–55.

The Examiner identifies the additional elements of claim 22 as “a redundant and load sharing system comprising two separate systems at a single location operating on a same switched high speed local area network; each separate system comprising a means for establishing a contract trading system electronically accessible by traders, means for selling, [and] means for settling and assessing a transaction fee.” Final Act. 3. Citing the Specification’s disclosure of a computer network based futures trading system or platform, the Examiner determines that the additional elements of claim 22 “are recited at a high level of generality and are recited as performing generic computer functions routinely used in computer applications.” *Id.* (citing Spec. ¶¶ 31–36). The Examiner next determines that “a contract system electronically accessible by traders is stated at a high level of generality and its broadest reasonable interpretation comprises only trading of contracts electronically through the use of some unspecified generic computers and interface.” *Id.* at 4. The Examiner explains that “[t]he use of generic computer components to transmit information through an unspecified interface does not impose any meaningful limit on the computer implementation of the abstract idea.” *Id.* The Examiner additionally determines that “[t]here is no indication that the combination of

⁸ We acknowledge that some of these considerations may be properly evaluated under Step 2 of *Alice* (Step 2B of the Revised Guidance). Solely for purposes of maintaining consistent treatment within the Office, we evaluate it under Step 1 of *Alice* (Step 2A, Prong Two, of the Revised Guidance). *See* Revised Guidance, 84 Fed. Reg. at 54–55.

elements improves the function of a computer or improves any other technology.” *Id.*

We agree with the Examiner that the additional elements of claim 22 recite no more than generic computing elements performing generic computing functions. *See, e.g.*, Spec. ¶¶ 32, 39, 237, 254, 269, 273, 277, 278, 280, Fig. 1; ’051 Prov. at 34–39. Thus, we determine that claim 22 does not integrate the judicial exception into a practical application, and thus is directed to the judicial exception. *See Revised Guidance*, 84 Fed. Reg. at 55 (explaining that courts have identified “merely us[ing] a computer as a tool to perform an abstract idea” as an example of when a judicial exception may not have been integrated into a practical application). In particular, we determine claim 22 does 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).

Appellant asserts that claim 22 recites features that go beyond, are significantly more than, and amount to a meaningful application of the alleged abstract idea. Appeal Br. 12–13; Reply Br. 9. According to Appellant, “[c]laim 22 recites features that amount to more than a mere recitation of the alleged abstract idea coupled with a generic instruction to ‘do it on a computer’ or ‘apply it.’ Appeal Br. 12.

Appellant’s assertions are not persuasive because they are conclusory and unsupported by the claim, the Specification, or other persuasive evidence or technical reasoning. Appellant has failed to demonstrate that claim 22 recites or requires any inventive programming, any specialized computer hardware or other inventive computer components, i.e., a particular machine, or that the claimed invention is performed using other than generic computer components. It is true that the invention’s ability to run on a general-purpose computer does not necessarily “doom[] the claims” for purposes of subject matter eligibility. Appeal Br. 12 (citing *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016)). But the fact remains that claim 22 fails to recite an element, or combination thereof, that amounts to “significantly more” than the recited abstract idea. Nor has Appellant identified any disclosure in the Specification of any inventive techniques or specialized computer components to perform the recited functions of claim 22.

3. USPTO Step 2B – Inventive Concept

We now consider whether claim 22 has an inventive concept, that is, whether any additional claim elements “‘transform the nature of the claim’ into a patent-eligible application.” *Alice*, 573 U.S. at 217 (quoting *Mayo*, 566 U.S. at 78, 79). This requires us to evaluate whether the additional claim elements add “a specific limitation or combination of limitations that are not well-understood, routine, conventional activity in the field” or “simply append[] well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality.” Revised Guidance, 84 Fed. Reg. at 56. “Whether something is well-understood, routine, and conventional to a skilled artisan at the time of the

patent is a factual determination.” *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1369 (Fed. Cir. 2018).

Here, the Examiner determines the additional claim elements recite “[g]eneric computer components . . . performing generic computer functions that are well-understood, routine and conventional activities” and “amount to no more than implementing the abstract idea with a computerized system.” Final Act. 3–4. For supporting evidence, the Examiner cites U.S. Patent No. 6,078,960 (filed July 3, 1998, “Ballard”), U.S. Patent No. 6,128,279 (filed Oct. 1, 1998, “O’Neil”), and U.S. Patent No. 6,185,601 B1 (filed Apr. 15, 1998, “Wolff”), and explains that these references “predate the instant application showing that redundant and load sharing systems comprising two separate systems in a single location on a same switched high speed local area network was well-known routine and conventional.” Ans. 5, 7. The Examiner further determines that “[l]ooking at the limitations as an ordered combination adds nothing that is not already present when looking at the elements taken individually. . . . Their collective functions merely provide conventional computer implementation.” *Id.* at 4.

Appellant argues the Examiner failed to provide substantial evidence under *Berkheimer* that the additional claim elements and their ordered combination provide routine, well-understood, routine, and conventional elements and functionality. Appeal Br. 8–14; Reply Br. 9.

Appellant’s argument does not persuade us that the Examiner erred. First, we agree with the Examiner that the cited U.S. Patents provide adequate evidence that claim 22’s “redundant and load sharing system comprising[] two separate systems at a single location operating on a same switched high speed local area network” was well-known, routine, and

conventional.” *See, e.g.*, Ballard, 1:13–29 (discussing hardware devices balancing the load among redundant servers, such that all accessible data is redundantly located on each server computer having the same physical address); Wolff, Fig. 11A (item 1164), 55:40–2 (describing use of a redundant array of disks (RAID) as being part of the prior art). Second, the Examiner’s determination that the additional elements of claim 22 are well-understood, routine, and conventional is amply supported by, and fully consistent with, the Specification, which describes Appellant’s invention in a manner that requires no more than a general-purpose computer with generic computing elements. *See, e.g.*, Spec. ¶¶ 32, 39, 237, 254, 269, 273, 277, 278, 280, Fig. 1; ’051 Prov. at 34–39. In addition, Appellant has not established that the instant patent eligibility inquiry contains an underlying issue of fact. It is true that the court in *Berkheimer* held that “[t]he patent eligibility inquiry may contain underlying issues of fact.” *Berkheimer*, 881 F.3d at 1365 (quoting *Mortgage Grader, Inc. v. First Choice Loan Servs. Inc.*, 811 F.3d 1314, 1325 (Fed.Cir. 2016) (“[T]he § 101 inquiry ‘*may* contain underlying factual issues.’”)). The court also held, however, that “[w]hen there is *no genuine issue of material fact* regarding whether the claim element or claimed combination is well-understood, routine, [and] conventional to a skilled artisan in the relevant field, this issue can be decided on summary judgment as a matter of law.” *Id.* at 1368 (emphasis added). Here, although Appellant asserts that certain limitations have not been shown as well-understood, routine, and conventional, Appellant does not explain specifically why these limitations are *not* well-understood, routine, and conventional, nor does Appellant identify any passages from the Specification that support its assertions.

Thus, the record fails to show that any material, factual issues exist regarding a claim element's well-understood, routine, or conventional nature in light of *Berkheimer*.

In view of the foregoing, considering claim 22 as a whole, we determine that the additional claim elements do not provide “a specific limitation or combination of limitations that are not well-understood, routine, conventional activity in the field.” Revised Guidance, 84 Fed. Reg. at 56. Rather, these elements do no more than “simply append[] well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality.” *Id.* Accordingly, we agree with the Examiner that claim 22 does not have an inventive concept.

4. *Additional Arguments*

For dependent claims 3, 5–8, 12, 21, and 24, Appellant additionally argues the Examiner has not provided an explanation as to why each of these claims as a whole is not patent-eligible. Appeal Br. 14–15. We do not agree.

Contrary to Appellant's argument, we determine the Examiner's § 101 analysis adequately addresses each of dependent claims 3, 5–8, 12, 21, and 24 as a whole and explains why the additional elements of these claims do not render them patent-eligible. Final Act. 4–5; *see also* Ans. 7–8. Consistent with the Examiner's determinations, the additional claim elements merely provide further description of a state, future event, catastrophic event, and election, and provide “a means for saving records for compliance with a commodity exchange act (CEA).” Claims App. 17–20. None of these elements—which merely provide further description of the abstract ideas and a generic storage element—converts the otherwise

ineligible concept of independent claim 22 into an inventive one. *See* Revised Guidance, 84 Fed. Reg. at 55 nn.31–32 (identifying examples in which a judicial exception has not been integrated into a practical application, such as when an additional element adds insignificant extra-solution activity to the judicial exception or does no more than generally link the use of a judicial exception to a particular technological environment or field of use). We also note for emphasis that § 101 case law is replete with instances where the court designated and focused only on one or more independent claims as representative of the entire claim set in conducting the § 101 analysis. *See, e.g., Ultramercial*, 772 F.3d at 712 (“As the other claims of the patent are drawn to a similar process, they suffer from the same infirmity as claim 1 and need not be considered further.”). This is especially the case where, as here, Appellant does not make separate and particular arguments beyond the independent claims. *See, e.g., CyberFone Sys., LLC v. Cellco P’ship*, 885 F. Supp. 2d 710, 716 n.6 (D. Del. 2012), *aff’d sub nom. Cyberfone*, 558 F. App’x 988 (Fed Cir. 2014) (“In its brief, plaintiff focuses solely on how claim 1 is patent-eligible under § 101 No argument is made with respect to claims 13 or 18 despite defendants raising the ineligibility of those claims. Given plaintiffs focus, the court deals only with claim 1.”).

5. Conclusion

Because we determine that claim 22 is directed to an abstract idea and does not contain an inventive concept, we sustain the Examiner’s rejection of claim 22 under 35 U.S.C. § 101. For the same reasons, as well as those discussed above in response to Appellant’s additional arguments (Appeal Br.

14–15), we sustain the Examiner’s rejection under § 101 of dependent claims 3, 5–8, 12, 21, and 24.

CONCLUSION

We affirm the Examiner’s rejection of claims 3, 5–8, 12, 21, 22, and 24 under 35 U.S.C. § 101.

No period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv). *See* 37 C.F.R. § 41.50(f).

In summary:

Claims Rejected	35 U.S.C. §	Reference(s) /Basis	Affirmed	Reversed
3, 5–8, 12, 21, 22, 24	101	Eligibility	3, 5–8, 12, 21, 22, 24	
Overall Outcome			3, 5–8, 12, 21, 22, 24	

AFFIRMED