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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte LISA SEACAT DELUCA, JEREMY A. GREENBERGER, and
TRUDY L. HEWITT

Appeal 2019-002495
Application 15/291,222¹
Technology Center 3600

Before JOSEPH A. FISCHETTI, NINA L. MEDLOCK, and
PHILIP J. HOFFMANN, *Administrative Patent Judges*.

FISCHETTI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1–4, 7–12 and 15–18. We have jurisdiction under 35 U.S.C. § 6(b).

¹ We use the word “Appellant” to refer to “Applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies International Business Machines Corporation as the real party in interest. App. Br. 2.

SUMMARY OF DECISION

We AFFIRM.

THE INVENTION

Appellant describes a “computerized method for automatic content generator compensation in response to graphic item selection.” Spec. ¶ 4.

Claim 1, reproduced below, is representative of the subject matter on appeal.

1. A computer-implemented method for automatic content generator compensation in response to graphic item selection, comprising executing on a computer processor:

in response to a selection by a viewing user of a graphic item that is visible within an image published on an interactive web-based service, analyzing text content of a comment posted within a comment application window by the viewing user on the interactive web-based service in association with the published image to identify a phrase within the posted comment that comprises a reference by the viewing user to an identifying indicia of the graphic item;

in response to determining that the selection of the graphic item is associated with a reference by the viewing user to the graphic item within the analyzed text content of the posted comment, executing an item selection action defined for the graphic item, and identifying a person depicted in the published image in an association with the graphic item via distinguishing the identified person from another person visible in the published image as a function of determining that the another person visible in the published image is not depicted in the association with the item, wherein the association is selected from the group consisting of wearing the graphic item and physically engaging the graphic item; and

in response to the execution of the item selection action defined for the graphic item, providing a first reward value to the person depicted in the association with the graphic item, not providing the first reward value to the another person that is determined to be visible in the published image and not depicted in the association with the graphic item, and providing a second reward value to another user that published the image on the interactive web-based service, wherein the

another user is different from the viewing user that selected the graphic item and posted the analyzed text content.

THE REJECTION

The following rejection is before us for review.

1. Claims 1–4, 7–12, and 15–18 are rejected under 35 U.S.C. § 101 as directed to a judicial exception (i.e., a law of nature, a natural phenomenon, or an abstract idea) without significantly more.

FINDINGS OF FACT

We adopt the Examiner’s findings as set forth on pages 2–8 in the Final Office Action² and on pages 3–6 in the Examiner’s Answer, concerning only the 35 U.S.C. § 101 rejection.

ANALYSIS

35 U.S.C. § 101 REJECTION

We will affirm the rejection of claims 1–4, 7–12, and 15–18 under 35 U.S.C. § 101.

The Appellant argues claims 1–4, 7–12, and 15–18 as a group. (Appeal Br. 5, 9). We select claim 1 as the representative claim for this group, and so the remaining claims stand or fall with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2015).

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

² All references to the Final Office Action refer to the Final Office Action mailed on May 22, 2018.

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*. *Alice*, 573 U.S. 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 id.* at 219 (“On their face, the claims before us are drawn to the concept of intermediated settlement, *i.e.*, the use of a third party to mitigate settlement risk.”); *see also Bilski v. Kappos*, 561 U.S. 593, 611 (2010) (“Claims 1 and 4 in petitioners’ application explain the basic concept of hedging, or protecting against risk.”).

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

In January 2019, the U.S. Patent and Trademark Office (USPTO) published revised guidance on the application of § 101. 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019)

(“Guidance”).³ “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 1.⁴

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”).⁵

Guidance, 84 Fed. Reg. at 52–55.

³ 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).

⁴ The 2019 Revised Guidance supersedes MANUAL OF PATENT EXAMINING PROCEDURE (“MPEP”) § 2106.04(II) and also supersedes all versions of the USPTO’s “Eligibility Quick Reference Sheet Identifying Abstract Ideas.” *See* 2019 Revised Guidance, 84 Fed. Reg. at 51 (“Eligibility-related guidance issued prior to the Ninth Edition, R-08.2017, of the MPEP (published Jan. 2018) should not be relied upon.”). Accordingly, Appellant’s arguments challenging the sufficiency of the Examiner’s rejection will not be addressed to the extent those arguments are based on now superseded USPTO guidance.

⁵ 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* 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.

Guidance, 84 Fed. Reg. at 52–56. The U.S. Court of Appeals for the Federal Circuit has explained that “the ‘directed to’ inquiry applies a stage-one filter to claims, considered in light of the specification, based on whether ‘their character as a whole is directed to excluded subject matter.’” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016) (quoting *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015)). It asks whether the focus of the claims is on a specific improvement in relevant technology or on a process that itself qualifies as an “abstract idea” for which computers are invoked merely as a tool. *See Enfish*, 822 F.3d at 1335–36.

In so doing, as indicated above, we apply a “directed to” two prong test: 1) evaluate whether the claim recites a judicial exception, and 2) if the claim recites a judicial exception, evaluate whether the claim “appl[ies], rel[ies] on, or use[s] the judicial exception in a manner that imposes a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception.” Guidance, 84 Fed. Reg. at 53; *see also* MPEP § 2106.05(a)–(c), (e)–(h).

Accordingly, we find the following:

The Specification states,

On-line publication activity may result in remuneration of rewards and other valuable consideration to content providers, in consideration for generating measured viewing activity by other users or viewers of an interactive web-based service. For example, advertisements may be added to or otherwise associated with a published posting, wherein the posting user is paid a fixed fee for each new view of the posting by another, unique person, sometimes referred to as a “page view.” Affiliate marketing is a type of performance-based marketing in which a business rewards one or more affiliates for each visitor or customer brought in, as determined by unique page views of said visitors or customers.

Specification ¶ 3.

The preamble states the claim is for “content generator compensation in response to graphic item selection.” Claim 1.

Claim 1 recites in pertinent part,

in response to a selection by a viewing user of a graphic item that is visible within an image published . . . service, analyzing text content of a comment posted within a comment application window by the viewing user . . . service in association with the published image to identify a phrase within the posted comment that comprises a reference by the viewing user to an identifying indicia of the graphic item; in response to determining that the selection of the graphic item is associated with a reference by the viewing user to the graphic item within the analyzed text content of the posted comment, executing an item selection action defined for the graphic item, and identifying a person depicted in the published image in an association with the graphic item via distinguishing the identified person from another person visible in the published image as a function of determining that the another person visible in the published image is not depicted in the association with the item, wherein the association is selected from the group consisting of wearing the graphic item and physically engaging the graphic item; and in response to the execution of the item selection action defined for the graphic item, providing a first reward value to the person

depicted in the association with the graphic item, not providing the first reward value to the another person that is determined to be visible in the published image and not depicted in the association with the graphic item, and providing a second reward value to another user that published the image on the interactive web-based service, wherein the another user is different from the viewing user that selected the graphic item and posted the analyzed text content.

The Examiner found claim 1 is:

directed to providing compensation to graphical item selection by analyzing text content posted on the interactive web-based services in association with the published image. The steps that describe/set-forth the idea are “analyzing text content comment posted, executing an item selection action, identifying indicia of the graphic item, providing a first reward, and providing a second reward.”

(Final Act. 2).

Accordingly, we find that claim 1 recites a reward incentive scheme for rewarding publication and interaction with published content. For example, claim 1 recites “providing a first reward value to the person depicted in the association with the graphic item, . . . and providing a second reward value to another user that published the image on the interactive web-based service, wherein the another user is different from the viewing user that selected the graphic item and posted the analyzed text content.” Such incentive based reward practices concern managing personal behavior or relationships or interactions between people, which is which is one of certain methods of organizing human activity that are judicial exceptions. Guidance, 84 Fed. Reg. at 52.

Turning to the second prong of the “directed to” test, claim 1 only generically requires “a computer processor.” This component is described in

the Specification at a high level of generality. *See* Spec. ¶¶ 5, 14, 19, Fig. 1. We fail to see how the generic recitation of this most basic computer component and/or of a system so integrates the judicial exception as to “impose[] a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception.” Guidance, 84 Fed. Reg. at 53. We find no indication in the Specification, nor does the Appellant direct us to any indication, that the operations recited in independent claim 1 invoke any assertedly inventive programming, require any specialized computer hardware or other inventive computer components, i.e., a particular machine, or that the claimed invention is implemented using other than generic computer components to perform generic computer functions. *See DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014) (“[A]fter *Alice*, there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible.”). Because no more than a generic computer is required, the claim also does not define, or rely on, a “particular machine.” MPEP § 2106.05(b). Further, the method does not transform matter. MPEP § 2106.05(c).

Thus, we find that claim 1 recites one of certain methods of organizing human activity that are judicial exceptions that is not integrated into a practical application.

That claim 1 does not preempt all forms of the abstraction or may be limited to content rewards, does not make it any less abstract. *See OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015) (“And that 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.”).

Turning to the second step of the *Alice* analysis, because we find that claim 1 is directed to abstract ideas/judicial exceptions, the claim must include an “inventive concept” in order to be patent eligible, i.e., there must be an element or combination of elements sufficient to ensure that the claim in practice amounts to significantly more than the abstract idea itself. *See Alice*, 573 U.S. at 217–18 (quoting *Mayo Collaborative Servs.*, 566 U.S. at 72–73).

Concerning this step the Examiner found the following:

The claims do not amount to significantly more than the recited abstract idea and the additional elements add no inventive concept. *A computer ‘that receives and sends information over a network- with no further specification — is not even arguably inventive’*. The limitations also represent insignificant data-gathering steps and thus adds nothing of practical significance to the abstract idea.

Moreover, dependent claims 2–4, 7, 8, 10–12, and 16–18 do not recite any limitations that would remedy the deficiencies outlined above as they do not add any elements which constitute significantly more.

Final Act. 3–4. We agree with the Examiner. “[T]he relevant question is whether the claims here do more than simply instruct the practitioner to implement the abstract idea . . . on a generic computer.” *Alice*, 573 U.S. at 225. They do not.

Taking the claim elements separately, the function performed by the computer at each step of the process is purely conventional. Using a computer to retrieve, select, and apply decision criteria to data and modify the data as a result amounts to electronic data query and retrieval—one of

the most basic functions of a computer. All of these computer functions are well-understood, routine, conventional activities previously known to the industry. *See Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016); *see also 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,’ . . . those functions can be achieved by any general purpose computer without special programming”). In short, each step does no more than require a generic computer to perform generic computer functions. Claim 1 does not, for example, purport to improve the functioning of the computer itself. In addition, the claim does not effect an improvement in any other technology or technical field. The Specification spells out different generic equipment and parameters that might be applied using this concept and the particular steps such conventional processing would entail based on the concept of information access under different scenarios (*see, e.g.*, Spec. ¶¶ 5, 14, 19, Fig. 1). Thus, the claim at issue amounts to nothing significantly more than instructions to apply the abstract idea using some unspecified, generic computer. Under our precedents, that is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 573 U.S. at 225–226.

Considered as an ordered combination, the computer components of claim 1 add nothing that is not already present when the steps are considered separately. The sequence of data reception-analysis (analyzing, identifying, determining, identifying, determining, executing, and providing) and storing is equally generic and conventional or otherwise held to be abstract. *See Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014) (sequence of receiving, selecting, offering for exchange, display, allowing

access, and receiving payment recited an abstraction), *Inventor Holdings, LLC v. Bed Bath & Beyond, Inc.*, 876 F.3d 1372, 1378 (Fed. Cir. 2017) (holding that sequence of data retrieval, analysis, modification, generation, display, and transmission was abstract), *Two-Way Media Ltd. v. Comcast Cable Commc'ns, LLC*, 874 F.3d 1329, 1339 (Fed. Cir. 2017) (holding sequence of processing, routing, controlling, and monitoring was abstract). The ordering of the steps is, therefore, ordinary and conventional.

We have reviewed all the arguments Appellant has submitted concerning the patent eligibility of the claims before us that stand rejected under 35 U.S.C. § 101. (App. Br. 12–29, Reply Br. 1–9). We find that our analysis above substantially covers the substance of all the arguments, which have been made. But, for purposes of completeness, we will address various arguments in order to make individual rebuttals of same.

Appellant highlights various claim limitations as examples of “improvement[s] to the field of web-based marketing.” Appeal Br. 7, *see also* Reply Br. 7. Specifically, Appellant asserts:

[t]he claimed inventions provide an *improvement* to the technical field of automated, web-based marketing mechanisms; by executing the specifically-claimed, precedential series of ‘rules’ or steps (i)-(v) described above, they autonomously and automatically allocate rewards to content posters and to persons appearing within content wearing or using a specific item, but not to other persons also visible but autonomously determined to be not wearing or using the item.

Id. at 8.

We are not persuaded by Appellant’s arguments because Appellant has not provided evidence that the improvements are made in the computer as contrasted with, e.g., incentive based marketing and advertising tactics.

The asserted improvement, of providing “rewards for clicking on defined published content are not limited to only those entities under formal agreement with marketers providing the rewards” (Appeal Br. 8), is an improvement to an abstract idea only. “A claim for a new abstract idea is still an abstract idea.” *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (citing *Mayo*, 566 U.S. at 90). Here, the alleged improvement lies in the abstract idea itself, not in any technological improvement. See *BSG Tech LLC v. Buyseasons, Inc.*, 899 F.3d 1281, 1287–88 (Fed. Cir. 2018). Even if the advance over the prior art is to “an organic, natural process that requires little or no effort by an advertising entity, merely the remuneration of price-per-click reward values to each of the posting users.” (Appeal Br. 9), that purported advance is an abstract idea itself, i.e., driving human behavior is similar to hedging against financial risk in *Bilksi*, 561 U.S. at 609, and collecting and analyzing investment data in *SAP America, Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1167–1168 (Fed. Cir. 2018), using conventional technology. The alleged improvement lies in the abstract idea itself, not in any technological improvement.

Although the claims purport to efficiently facilitate automatically conveying rewards to “a posting person... without requiring prior or formal agreement . . . [to] proportionately expand, grow and mushroom via deployment of the claimed invention” (Appeal Br. 8–9, *see also* Reply Br. 5), our reviewing court has held that speed and accuracy increases stemming from the ordinary capabilities of a general purpose computer “do[] not materially alter the patent eligibility of the claimed subject matter.” *Bancorp Servs., L.L.C. v. Sun Life Assurance Co. of Can. (U.S.)*, 687 F.3d 1266, 1278 (Fed. Cir. 2012).

Although we agree with the Appellant that the claims must be read as a whole (Appeal Br. 10, Reply Br. 7), we nevertheless find, on balance, that claim 1 is directed to a reward incentive scheme for rewarding publication and interaction with published content for the reasons specified above with respect to our “directed to” findings. As found *supra*, claim 1 only generically requires “a computer processor.” What remains in the claim after disregarding this device limitation are abstractions, i.e.,

analyzing text content of a comment posted within a comment application window by the viewing user on the interactive web-based service in association with the published image to identify a phrase within the posted comment that comprises a reference by the viewing user to an identifying indicia of the graphic item;

...

identifying a person depicted in the published image in an association with the graphic item via distinguishing the identified person from another person visible in the published image as a function of determining that the another person visible in the published image is not depicted in the association with the item.

In other words, the asserted improvement is, at best, an improvement to the abstract idea. But, “[n]o matter how much of an advance in the . . . field the claims recite, the advance lies entirely in the realm of abstract ideas, with no plausibly alleged innovation in the non-abstract application realm.” *SAP Am., Inc.*, 898 F.3d at 1163.

Appellant argues, “[t]he claims in the instant application recite specific steps (i) through (v) to accomplish a particular result, instead of

merely reciting a desired result, and are therefore not directed to an abstract idea. *Finjan, Inc. v. Blue Coat Systems, Inc.*”⁶ (Appeal Br. 10).

We disagree with the Appellant that the asserted claims are akin to the claims found patent eligible in *Finjan* because in *Finjan*, the court held that claims to a “behavior-based virus scan” were a specific improvement in computer functionality and hence not directed to an abstract idea. *Finjan*, 879 F.3d at 1304. The claimed technique of scanning enabled “more flexible and nuanced virus filtering” and detection of potentially dangerous code. *Id.* This was done by “scanning a downloadable and attaching the results of that scan to the downloadable itself in the form of a ‘security profile.’” *Id.* at 1303. The security profile included the information about potentially hostile operations produced by a “behavior-based” virus scan, as distinguished from traditional, “code-matching” virus scans that are limited to recognizing the presence of previously-identified viruses, typically by comparing the code in a downloadable to a database of known suspicious code. *Id.* at 1304. This behavior-based scan resulted in a new type of file that when attached to a downloadable file, allowed the computer to do more to protect itself than in the past.

The instant claims present no such new type of processing to create a security profile. Instead, the claims are conventional data processing of content. They may improve marketing efforts, but this is not an improvement to the computer.

Appellant next argues,

[t]hus, pursuant to consideration (1) of the Step 2B analysis ‘Significantly More’ considerations, the claimed device aspects

⁶ *Finjan, Inc. v. Blue Coat Systems, Inc.*, 879 F.3d 1299 (Fed. Cir. 2018).

provide an improvement to the technical field of automated, web-based marketing mechanisms. The inventive concept is found in the nonconventional and non-generic *arrangement* of the claimed component subject matter The limitations at issue are similar to subject matter that the courts have found to qualify as ‘significantly more’ when recited in a claim with a judicial exception: ‘[]Adding a specific limitation other than what is well-understood, routine, conventional activity in the field, or adding unconventional steps that confine the claim to a particular useful application.’ See *BASCOM*, and MPEP 2106.05.

...

[T]here is no showing of record by the examiner of a citation to an express statement in the specification or to a statement made by an applicant during prosecution that demonstrates the well-understood, routine, conventional nature of the “additional element(s)” at issue.

(Appeal Br. 10–11).

As described above, the only claim element beyond the abstract idea is “a computer processor.” Appellant cannot reasonably deny that the operation of “a computer processor” is well-understood, routine, or conventional. Indeed, the Federal Circuit, in accordance with *Alice*, has “repeatedly recognized the absence of a genuine dispute as to eligibility” where claims have been defended as involving an inventive concept based “merely on the idea of using existing computers or the Internet to carry out conventional processes, with no alteration of computer functionality.” *Berkheimer v. HP Inc.*, 890 F.3d 1369, 1373 (Fed. Cir. 2018) (Moore, J., concurring) (citations omitted); *see also BSG Tech LLC*, 899 F.3d at 1291 (“BSG Tech does not argue that other, non-abstract features of the claimed inventions, alone or in combination, are not well-understood, routine and conventional database structures and activities. Accordingly, the district

court did not err in determining that the asserted claims lack an inventive concept.”).

The Federal Circuit in *Berkheimer* made clear that “not every § 101 determination contains genuine disputes over the underlying facts material to the § 101 inquiry.” *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1368 (Fed. Cir. 2018). In fact, the Federal Circuit in *Berkheimer* did not require evidentiary support for independent claim 1 because “[t]he limitations [of claim 1] amount to no more than performing the abstract idea of parsing and comparing data with conventional computer components.” *Id.* at 1370.

Citing *BASCOM Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016), Appellant argues that whether or not the additional elements in claim 1 recite generic computer network or Internet components, “the elements in combination amount to significantly more because of the non-conventional and non-generic arrangement that provided a technical improvement in the art.” Appeal Br. 9. But, Appellant does not identify the allegedly “non-conventional and non-generic” arrangement of elements. Nor does Appellant otherwise adequately explain (*id.* at 11, Reply Br. 8) in what way *BASCOM* impacts the patent eligibility of claim 1. Claim 1 simply recites functional results to be achieved by any means. *See, e.g., Content Extraction and Transmission LLC v. Wells Fargo Bank, Nat’l Ass’n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014).

Concerning claims 2, 10 and 16 (Appeal Br. 12–14), Appellant attempts to analogize these claims to the rules claimed in *McRO, Inc. v. Bandai Namco Games America Inc.*, 837 F.3d 1299 (Fed. Cir. 2016). In *McRO*, “it was the incorporation of the claimed rules not the use of the computer, that improved the existing technology process,” because the

prior process performed by humans “was driven by subjective determinations rather than specific, limited mathematical rules.” *Id.* at 1314 (internal quotation marks, citation, and alterations omitted). In contrast, the claims of the instant application merely implement an old practice of rewarding participation in the publication of content. Appellant has not argued that the claimed processes of rewarding publishers and the viewers of published content uses rules in a manner technologically different from those which humans used, albeit with less efficiency, before the claimed invention was made. Merely automating a reward process is just that, automation of a known existing practice.

The claims in *McRO* were not directed to an abstract idea, but instead were directed to ‘a specific asserted improvement in computer animation, i.e., the automatic use of rules of a particular type.’ We explained that ‘the claimed improvement [was] allowing computers to produce ‘accurate and realistic lip synchronization and facial expressions in animated characters’ that previously could only be produced by human animators.’ The claimed rules in *McRO* transformed a traditionally subjective process performed by human artists into a mathematically automated process executed on computers.

FairWarning IP, LLC v. Iatric Sys., Inc., 839 F.3d 1089, at 1094 (Fed. Cir. 2016) (differentiating the claims at issue from those in *McRO*).

Claims 2, 10, and 16 also depend from independent claims 1, 9 and 15, respectively, and are directed to the same abstract idea as claim 1. *See Content Extraction & Transmission LLC*, 776 F.3d at 1348 (explaining that when all claims are directed to the same abstract idea, “addressing each claim of the asserted patents [is] unnecessary.”). These dependent claims recite additional features of “identifying within the analyzed text content indicia of the graphic item that is selected from the group consisting of a

name of the graphic item, a type of the graphic item, a category of the graphic item and a color of the graphic item.” But, the additional elements recited in these claims are insufficient, in our view, to confer patent eligibility as each item concerns only a further detail in a behavioral driven reward process.

Appellant’s other arguments, including those directed to now-superseded USPTO guidance, have been considered but are not persuasive of error. *See* 2019 Revised Guidance, 84 Fed. Reg. at 51 (“Eligibility-related guidance issued prior to the Ninth Edition, R-08.2017, of the MPEP (published Jan. 2018) should not be relied upon.”).

CONCLUSIONS OF LAW

We conclude the Examiner did not err in rejecting claims 1–4, 7–12 and 15–18 under 35 U.S.C. § 101.

DECISION

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–4, 7–12, 15–18	101	Eligibility	1–4, 7–12 15–18	

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