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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte EDUARDO PUGGINA HANSEL and
RICARDO ALBA ALVES VIANNA

Appeal 2019-002772
Application 14/789,240
Technology Center 3600

Before DONALD E. ADAMS, RICHARD M. LEBOVITZ, and
JEFFREY N. FREDMAN, *Administrative Patent Judges*.

FREDMAN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal[1, 2] under 35 U.S.C. § 134(a) involving claims to a method of performing an electronic transaction in a computerized transaction system that utilizes electronic messaging. The Examiner rejected the claims as obvious and as reciting non-statutory subject matter. 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 MasterCard International Incorporated (*see* Appeal Br. 2).
[2] We have considered and herein refer to the Specification of July 1, 2015 ("Spec."); Final Office Action of May 17, 2018 ("Final Act."); Appeal Brief of Oct. 24, 2018 ("Appeal Br."); Examiner's Answer of Dec. 18, 2018 ("Ans."); and Reply Brief of Feb. 19, 2019 ("Reply Br.").

Statement of the Case

Background

"In some environments, major commercial or agricultural transactions may be financed via bank loans, sometimes supported by government-sponsored credit programs" (Spec. 1:6–8). "The processes required for such transactions may be time-consuming and paper-intensive. The present inventors have recognized opportunities to leverage convenient capabilities of a payment account system to improve handling of commercial/ agricultural transactions" (*id.* 8–11).

The Claims

Claims 1–20 are on appeal. Claim 1 is reproduced below, reformatted for clarity, and with bracketed letters added to identify certain language:

> 1. A method of performing an electronic transaction in a computerized transaction system that utilizes electronic messaging, the method comprising:
>
> [a] receiving, in a system computer, first transaction data from a merchant computer, the first transaction data including an account holder's payment account number, the first transaction data related to a purchase transaction, the merchant computer operated by a merchant;
>
> [b] using the first transaction data by the system computer to generate a transaction authorization request;
>
> [c] routing the transaction authorization request from the system computer to an account issuer computer, the account issuer computer operated by an account issuer;
>
> [d] receiving an authorization response at the system computer from the account issuer computer;
>
> [e] receiving second transaction data from the merchant computer, the second transaction data related to said purchase transaction, the second transaction data including an electronic invoice generated by the merchant, said electronic invoice including the merchant's invoice number applicable to said electronic invoice;

> [f] allowing, by the system computer, the account issuer to access the electronic invoice to allow the account issuer to validate the electronic invoice;
>
> [g] receiving, by the system computer, an indication from the account issuer computer that the account issuer has validated the electronic invoice;
>
> [h] sending a message from the system computer to the account holder via an account holder device to indicate that the account issuer has validated the purchase transaction;
>
> [i] allowing, by the system computer, the account holder to access at least some of the first and second transaction data by the account holder device;
>
> [j] receiving an indication in the system computer from the account holder device that the account holder authenticates the purchase transaction; and
>
> [k] informing, by the system computer, the merchant, the account holder and the account issuer that the purchase transaction is fully authenticated.

The Rejections

A. The Examiner rejected claims 1–10 and 14–20 under 35 U.S.C. § 103 as obvious over Pourfallah[3] and Kagan[4] (Final Act. 7–12).

B. The Examiner rejected claims 11 and 13 under 35 U.S.C. § 103 as obvious over Pourfallah, Kagan, and Tarvydas[5] (Final Act. 13–16).

C. The Examiner rejected claim 12 under 35 U.S.C. § 103 as obvious over Pourfallah, Kagan, Tarvydas, and Lucas[6] (Final Act. 17).

D. The Examiner rejected claims 1–20 under 35 U.S.C. § 101 as directed to an abstract idea (Final Act. 3–6).

---

[3] Pourfallah et al., US 2012/0253852 A1, published Oct. 4, 2012.
[4] Kagan et al., US 2009/0292619 A1, published Nov. 26, 2009.
[5] Tarvydas et al., US 2002/0038255 A1, published Mar. 28, 2002.
[6] Lucas, US 2006/0038010 A1, published Feb. 23, 2006.

A. 35 U.S.C. § 103(a) over Pourfallah and Kagan

The Examiner finds "Pourfallah discloses a method of performing an electronic transaction in a computerized transaction system that utilizes electronic messaging" (Final Act. 7; emphasis omitted). The Examiner finds "[w]hile Pourfallah discloses interactions between the communication devices via various communication networks (Figs. 2A and2B; ¶¶ 0057-0059), Pourfallah does not explicitly disclose sending a message <u>from the system computer</u> to the account holder via an account holder device" (*id.* 9).

The Examiner finds Kagan "teaches a transaction facilitator server . . . that facilitates the transaction among the various parties by redirecting and routing the user among the merchant server, the merchant payment server, and the billing service provider" (Final Act. 9). The Examiner finds it obvious to combine the teachings of Pourfallah and Kagan in order "to expand the method of Pourfallah in order to efficiently, securely, and conveniently process electronic payments among a user, a billing service provider, a merchant, and a transaction facilitator using a transaction facilitator server" (*id.* 10).

The issue with respect to this rejection is: Does a preponderance of the evidence of record support the Examiner's conclusion that Pourfallah and Kagan render claim 1 obvious?

Findings of Fact

1. Pourfallah teaches a "user may operate a payment device (e.g., a mobile wallet component instantiated on a smart phone, a healthcare prepaid card, a web-based application, etc.) for checkout at a merchant,

wherein the mobile computing device is web enabled, and may receive a communication from a point of service terminal (POS)" (Pourfallah ¶ 36).

2. Figure 2A of Pourfallah is reproduced below:

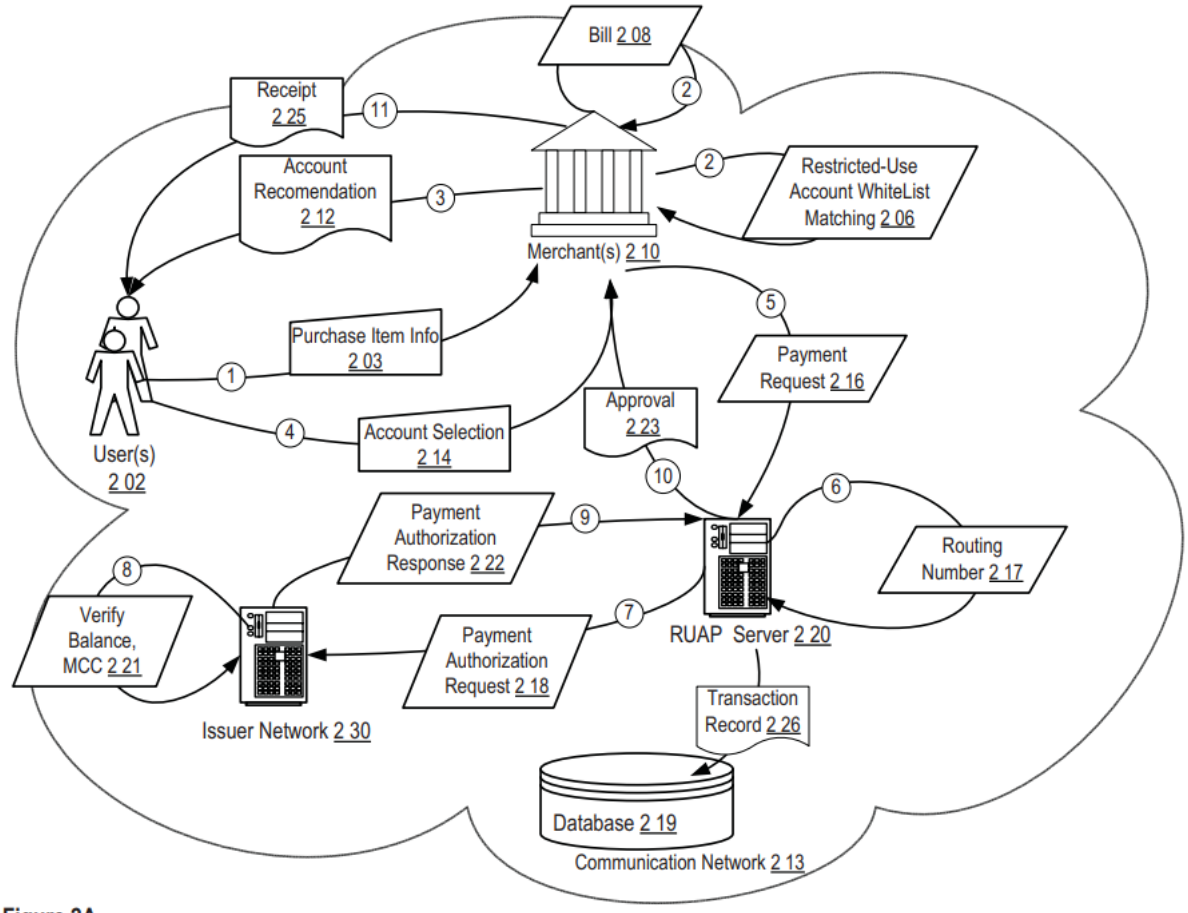

Figure 2A RUAP Example Data Flow: In-Flight Intelligent PoS Checkout

Figure 2A "provides a data block diagram illustrating data flow between RUAP server, user, merchant and affiliated entities to substantiate an in-flight PoS checkout payment at a merchant within embodiments of the RUAP [(restricted use account payment)]" (Pourfallah ¶ 57).

3. Pourfallah teaches, regarding step (a), that a "user **202** may walk in a physical merchant store and bring a shopping cart of purchase item to a PoS terminal, which may scan in the purchase item information **203**," then "the user may submit account information together with the account

selection message **214** to the PoS terminal," and then "upon receiving the user's account selection, the merchant **210** may generate a payment request message **216** to the RUAP server **220**" (Pourfallah ¶¶ 60, 65–66).

4. Pourfallah teaches, regarding step (b), that "the RUAP server **220** may obtain a routing number **217** from the received payment request **216** based on which the RUAP may determine where to forward the payment authorization request **218**" (Pourfallah ¶ 67).

5. Pourfallah teaches, regarding step (c), that "the RUAP server **220** may route the payment authorization request **218** to the credit card issuing bank" (Pourfallah ¶ 67).

6. Pourfallah then teaches, regarding step (d), that "the account issuer may verify whether the account has sufficient remaining balance to furnish the payment, whether the MCC of the purchase item is eligible for usage of the account, and/or the like" (Pourfallah ¶ 68). Pourfallah teaches "the account issuer network **230** may generate a payment authorization response message **222**" and "[u]pon receiving the payment authorization **222**, the RUAP server **220** may process the payment" (Pourfallah ¶ 70).

7. Pourfallah teaches, regarding step (e), "the merchant **210** may generate a bill **208** upon the obtained purchase item information. For example, the bill may take a similar data structure as the obtained purchase item information **203**" (Pourfallah ¶ 62). Pourfallah teaches a "request ID" of "SHP-0001" is provided by the merchant in the code provided (*see* Pourfallah ¶ 66).

8. Pourfallah teaches, regarding steps (f) and (g), that "the issuer network **330** may receive and process the payment transaction request **331** . . . . The issuer may further generate a response message **335** upon

verifying item eligibility, account balance, etc., to the RUAP server **320**" (Pourfallah ¶ 105).

9. Pourfallah teaches, regarding step (h), that "upon obtaining the approval notice **223** of the payment transaction, the merchant **210** may generate a receipt **225** to the user . . . the user may obtain an electronic receipt (e.g., via online shopping site, via NFC handshake with the PoS terminal from a mobile device, etc.)" (Pourfallah ¶ 71).

10. Pourfallah teaches, regarding step (i), that "the merchant may submit bill information **212** to the RUAP server **220**. As such, the RUAP server may forward bill information to the user via email, SMS, instant messaging, wallet messaging, and/or the like" (Pourfallah ¶ 78).

11. Pourfallah teaches, regarding step (j), that "the user device may provide a card authorization request, on behalf of the user, a HTTP(S) GET message including the product order details for the RUAP server **220**" (Pourfallah ¶ 95).

12. Pourfallah teaches, regarding step (k), that "the RUAP server **220** may be integrated with a payment network, e.g., VisaNet, etc., which may facilitate the payment processing. In one implementation, the RUAP server **220** may debit the approved payment amount from the user's account and credit to the merchant **210**." (Pourfallah ¶ 70).

13. The Examiner acknowledges "Pourfallah does not explicitly disclose sending a message <u>from the system computer</u> to the account holder via an account holder device" (Final Act. 9).

14. Kagan teaches "[a]n objective of the present invention is to provide an efficient and secure method for processing an electronic transaction among a user, a billing service provider, a merchant, and a

transaction facilitator using a transaction facilitator server accessible via a data network" (Kagan 11).

15. Kagan teaches "an exemplary architecture of the transaction facilitating system . . . . The electronic transaction is typically initiated by a user **101**, which accesses the Internet **50**, or other data network, using a network compatible client device, such as a personal computer **102**" (Kagan ¶ 38).

16. Kagan teaches a "transaction facilitator server **131** facilitates the transaction among the various parties to the on-line transaction, redirecting and routing the user **101** among the merchant server **122**, the merchant payment server **121**, and the billing service provider server **111**" (Kagan ¶ 43).

Principles of Law

"The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 416 (2007).

Analysis

We adopt the Examiner's findings of fact and reasoning regarding the scope and content of the prior art (Final Act. 7–12; FF 1–16) and agree that the claims are obvious over Pourfallah and Kamal. We address Appellant's arguments below.

Appellant contends

> that neither Pourfallah nor Kagan teaches or suggests a system computer that, after receiving an authorization response from an account issuer computer, receives *<u>second transaction data</u> from the merchant computer, the second transaction data related to said purchase transaction, the second transaction data <u>including an electronic invoice generated by the merchant</u>, said*

> *electronic invoice* <u>*including the merchant's invoice number applicable to said electronic invoice*</u>*,* allows *the account issuer to access the electronic invoice to allow the account issuer to validate the electronic invoice*, and then receives *an indication from the account issuer computer that the account issuer has validated the electronic invoice*, as required by claim 1.

(Appeal Br. 28).

We find this argument unpersuasive because Pourfallah teaches that transaction data for a purchase transaction, including payment account information inputted into the merchant's point of sale terminal, is transmitted from the merchant computer to a system computer or RUAP (FF 3). Pourfallah teaches using the transaction data received by the system computer, the RUAP, to generate a payment authorization request (FF 4). Pourfallah also teaches second transaction data composed of the bill **208**, which is a type of electronic invoice, where the "request ID" is a merchant number associated with the electronic invoice (FF 7). Pourfallah teaches allowing the account issuer to access and validate the invoice, and send a message to the system computer that the validation has occurred (FF 8). Pourfallah teaches sending a message to the account holder via an account holder device that the transaction has been approved (FF 9).

We also find that the ordinary artisan would have found it obvious, based on Pourfallah's teachings, to ensure that the account issuer authorizes any payment transactions because Pourfallah teaches "the RUAP server **220** may be integrated with a payment network, e.g., VisaNet, etc., which may facilitate the payment processing" (FF 12). This facilitation does not occur until after "receiving the payment authorization **222**, the RUAP server **220** may process the payment" (FF 6). Therefore, Pourfallah reasonably

suggests the use of a payment network to assist in verifying authorization by the account issuer prior to payment (FF 6, 8, 9, 12).

Appellant contends that "there is no indication that the payment request includes the merchant's bill" (Appeal Br. 29). Appellant also contends that "paragraph 0067 only describes routing a payment authorization request to a credit card issuer, and does not indicate or suggest that the payment authorization request includes the merchant's bill" (*id.*).

We find these arguments unpersuasive because we agree with the Examiner that "paragraph [0068] of Pourfallah as the payment authorization response message generated by the account issuer network also contains the invoice/bill transaction data information" (Ans. 14). In particular, the computer code provided by Pourfallah is reasonably understood as satisfying a requirement for a "bill," as shown below:

```
<Account>
    <AccountNo> 0000 0000 0000 </AccountNO>
    <AccountType> FSA </AccountType>
    <Employer> SuperFast Software Co. </Employer>
    ...
  </Account>
<PurchaseItem>
    <Item1>
        <ItemCode> DRUG-23401 </ItemCode>
        <Category> DRUG </Category>
        <Sub-Category> Non-Prescription </Sub-Category>
        </ItemName> NyQuil Cold Medicine </ItemName>
        <Description> NyQuil Cold&Flu Liquid 80 mL
        </Description>
        <Quantity> 1 </Quantity>
        <UnitPrice> 12.99 </UnitPrice>
        <TotalAmt> 12.99 </TotalAmt>
```

The computer code reproduced above from Pourfallah shows lines with the account number, account type, and items purchased, all components of a "bill" or "invoice" (*see* Pourfallah ¶ 68).

Conclusion of Law

A preponderance of the evidence of record supports the Examiner's conclusion that Pourfallah and Kagan render claim 1 obvious.

B. & C. 35 U.S.C. § 103(a) over Pourfallah, Kagan, Tarvydas, and Lucas

Appellant does not separately argue these obviousness rejections, instead relying upon their arguments to overcome the combination of Pourfallah and Kagan (*see* Appeal Br. 30–31). We do not find these arguments persuasive for the reasons given above. The Examiner provides sound fact-based reasoning for combining Tarvydas and Lucas with Pourfallah and Kagan (*see* Final Act. 13–17). Having affirmed the obviousness rejection of claim 1 over Pourfallah and Kagan, we also find that the further combinations with Tarvydas and Lucas renders the rejected claims obvious for the reasons given by the Examiner.

D. 35 U.S.C. § 101

The Examiner finds the claims "are directed towards 'authorizing and authenticating purchase transactions with invoices' which is considered to be a method of organizing human activity" (Final Act. 5). The Examiner finds "[a]uthorizing and authenticating purchase transactions with invoices is considered to be a method of organizing human activity because it is a concept relating to interpersonal activates such as managing relationships or transactions between people . . . and human behavior or satisfying or avoiding a legal obligation" (*id.*).

Appellant contends:

> claim 1 is directed to an improvement in a field of technology, namely the technological field concerned with electronic payment card account networks. Specifically, the claimed method provides a second stage of electronic transaction messaging to the conventional process which only includes having an authorization request message followed by an authorization response message.

(Appeal Br. 18). Appellant contends the Examiner's position that "elements such as routing a transaction authorization request to an account issuer and receiving an authorization response from the account issuer constitute 'human activity' completely ignores the reality that these actions arose out of, and are consistently and exclusively performed in, a computerized electronic payment account transaction processing system" (*id.* 19). Appellant contends "[t]hus, these transaction processing steps are <u>not</u> 'human activity'" (*id.*).

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. *See, e.g.*, *Alice Corp. Pty. Ltd. 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.").

Concepts determined to be abstract ideas, and therefore 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) 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)) or software "purporting to improve the functioning of the computer itself" (*Enfish, LLC v. Microsoft Corp*., 822 F.3d 1327, 1335 (Fed. Cir. 2016) (bracketed alteration and quotation marks omitted)).

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 United States Patent and Trademark Office published guidance on the application of 35 U.S.C. § 101. USPTO's *2019 Revised Patent*

Subject Matter Eligibility Guidance ("Guidance").[7] Under the Guidance, in determining what concept the claim is "directed to," 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) (Guidance Step 2A, Prong 1); and
>
> (2) additional elements that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h)) (Guidance Step 2A, Prong 2).

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 contains an "'inventive concept' sufficient to 'transform'" the claimed judicial exception into a patent-eligible application of the judicial exception. *Alice*, 573 U.S. at 221 (quoting *Mayo*, 566 U.S. at 82). In so doing, we thus consider whether the claim:

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

(Guidance Step 2B). *See* Guidance, 84 Fed. Reg. at 54–56.

Analysis

Applying the Revised Guidance to the facts on this record, we find that Appellant's claims 1–20 are directed to patent-ineligible subject matter.

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[7] *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50–57 (January 7, 2019).

Because the same issues are present in each of the claims, we focus our consideration on representative claim 1. The same analysis applied below to claim 1 also applies to the other rejected claims.

A. Guidance Step 1

We consider whether the claimed subject matter falls within the four statutory categories set forth in § 101, namely "[p]rocess, machine, manufacture, or composition of matter." 2019 Guidance, 84 Fed. Reg. at 53–54; *see* 35 U.S.C. § 101. Claims 1 and 11 recite a "method" and claim 14 recites an "apparatus" and, thus, fall within the "process," and "machine" categories respectively. Consequently, we proceed to the next step of the analysis.

B. Guidance Step 2A, Prong 1

The Revised Guidance instructs us first to determine whether any judicial exception to patent eligibility is recited in the claim. The Revised Guidance identifies three judicially-excepted groupings identified by the courts as abstract ideas: (1) mathematical concepts, (2) certain methods of organizing human behavior such as fundamental economic practices, and (3) mental processes.

Claim 1 reasonably falls within one of the three judicially-excepted groupings listed in the Revised Guidance: methods of organizing human activity such as a fundamental economic practice of authorizing and authenticating transaction and associated invoices. *Alice* found an abstract idea in claims to "a method of exchanging financial obligations between two parties using a third-party intermediary to mitigate settlement risk." *Alice*, 573 U.S. at 219.

Claim 1 is drawn to a method of authorizing and authenticating transactions using a computer network. This is reasonably understood as a fundamental economic practice, just as a merchant decides whether a customer's non-cash payment is acceptable based on contacts with any payment intermediaries. Indeed, Kagan teaches that "merchants offering products and services over the World Wide Web are interested in a payment process that brings them revenue immediately" (Kagan ¶ 5). Kagan explains that traditional "third party systems, which broker payments among a consumer, the merchant, and the consumer's bank or other billing service provider, require the consumer to open an account in advance of a purchase and to provide payment information, such as credit card numbers or bank accounts" (*id.* ¶ 8). Kagan teaches that a "user is connected to the billing service provider service in order to authorize the transaction based on the user's account information" (*id.* ¶ 12). Kagan therefore demonstrates that authorizing and authenticating transactions is a fundamental economic practice faced by merchants (*see id.*). Accordingly, we conclude that the steps of claim 1 recites the judicial exception of organizing human activities.

We find the instant claims similar to those in *Smart Systems*, where the Federal Circuit held that claims directed to a method for "validating entry into a first transit system using a bankcard terminal" did not satisfy *Alice* step one. *See Smart Sys. Innovations, LLC v. Chicago Transit Auth.*, 873 F.3d 1364, 1369, 1372 (Fed. Cir. 2017). *Smart Systems* found the claims were "not directed to a combined order of specific rules that improve any technological process, but rather invoke computers in the collection and arrangement of data. Claims with such character do not escape the abstract idea exception under *Alice* step one." *Id.* at 1372–3. The instant claim 1 is

similar because claim 1 uses computers to store customer transaction data and use that accumulated data to decide whether the transaction is authorized and validated by the account issuer and communicate that decision to the customer (i.e., account holder).

Appellant contends that "these transaction processing steps are not 'human activity.' To hold otherwise is to defy the direction of the CAFC in *Enfish* that the true nature of the claims as recited should be considered, rather than an unduly abstracted version of the claims." (Appeal Br. 19). Appellant "submits that the claimed process solves the technological problem of how to enhance transaction security while also increasing the effective capabilities of the electronic payment card account network" (*id.*).

We are unpersuaded by Appellant's reliance on *Enfish*. *Enfish* explains that "the first step in the *Alice* inquiry in this case asks whether the focus of the claims is on the specific asserted improvement in computer capabilities . . . or, instead, on a process that qualifies as an 'abstract idea' for which computers are invoked merely as a tool." *Enfish*, 822 F.3d at 1335–6. Applied to claim 1, the claimed computer implemented method does not teach a technical improvement in a computer processor or in the electrical components of a computer for routing transaction information, but rather uses the computer as a tool so that "[e]fficient processing may be provided by the electronic-based exchange of information. Validation by the issuer and authentication by the account holder may operate so that chargebacks of transactions may practically be eliminated" (Spec. 8:6–9).

That is, the current claims simply use the computer and software as tools to perform the process of organizing human activity as performed previously by customers, merchants, and credit providers, whether these

were promissory notes, bank checks, or telephone based credit checks prior to the existence of computer interchange networks.

Appellant does not identify any teaching in the Specification that actually improves either the computer or the physical components of the computerized transaction system.

Guidance Step 2A, Prong 2

Having determined that the claims are directed to a judicial exception, the Revised Guidance directs us to next consider whether the claims integrate the judicial exception into a practical application. Guidance Step 2A, Prong 2. "[I]ntegration into a practical application" requires that the claim recite an additional element or a combination of elements, that when considered individually or in combination, "apply, rely on, or use 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 54.

A judicial exception is not integrated into a practical application when the claims are drawn to the mere use of "a computer as a tool to perform an abstract idea." Guidance, 84 Fed. Reg. at 55; *See Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016) (finding that "the focus of the claims is not on . . . an improvement in computers as tools, but on certain independently abstract ideas that use computers as tools"); *Enfish,* 822 F.3d at 1335–6 (determining whether the claims at issue were focused on a "specific asserted improvement in computer capabilities" or "a process that qualifies as an 'abstract idea' for which computers are invoked merely as a tool").

Here, there is no practical integration of the abstract idea. Other than the limitations directed to the abstract idea, as discussed above, the invention is claimed at a very high level of generality and relies upon standard computing devices (*see, e.g.*, Spec. 3:8–9, 17, "a conventional personal computer or the like" and "a conventional payment account system"; Spec. 5:29 "conventional payment account system transactions"; and Spec. 12:4–5, 27 "one or more conventional processors" and "one or more conventional operating systems"). We appreciate that simply because standard devices are used is not solely dispositive of practical integration.

However, in addition to using standard computer technology, the instant claims do not recite anything unconventional regarding the process of authorizing and authentication transactions relative to the prior art as evidenced by Pourfallah and Kagan (FF 1–16). We note that the Specification does not recite any specific algorithms for performing the transactions but just provides the general concept of computerizing known methods of authenticating transactions. *See* Spec. 1:8–11 (Prior art "processes required for such transactions may be time-consuming and paper-intensive. The present inventors have recognized opportunities to leverage convenient capabilities of a payment account system to improve handling of commercial/agricultural transactions."). Thus, the Specification is reasonably understood as teaching simple computerization of known transaction systems.

Therefore claim 1 does not recite elements that integrate the abstract idea into a practical application that is more than the abstract idea itself. Instead, the claims recite conventional computer components that are used to

apply the method of organization of human activity of authorizing and authenticating transactions.

The current claims simply use the computer and software as tools to perform a mental process and a process of organizing human activity as routinely performed by a merchant and interchange network or by the process disclosed by Pourfallah and Kagan (FF 1–16). Appellant does not identify any teaching in the Specification that actually improves either the computer or the physical components of the dispatch system.

We note that none of the detailed steps represent anything other than taking the abstract idea of authorizing and authenticating consumer transactions and applying it using a computer system. *Alice* makes clear that "[s]tating an abstract idea while adding the words 'apply it with a computer' simply combines those two steps, with the same deficient result." *Alice*, 573 U.S. at 223.

C. Guidance Step 2B

Having determined that the judicial exception is not integrated into a practical application, the Revised Guidance requires us to evaluate the additional elements individually and in combination to determine whether they provide an inventive concept, such as a specific limitation beyond the judicial exception that is not well-understood, routine, conventional in the field, or simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception. *See* 84 Fed. Reg. at 51.

Appellant cites *Berkheimer v. HP Inc.*, 881 F.3d 1360 (Fed. Cir. 2018) for the "well-understood, routine, and conventional" test (*see* Appeal Br. 21). Appellant contends the "Berkheimer Memorandum <u>requires</u> Examiners

to adduce factual evidence to support any finding that additional claim elements beyond an 'abstract idea' do not amount to 'significantly more' than the abstract idea. The Examiner failed to do so in this case" (*id.*). Appellant contends

> The claims require a specific structure (which includes the system computer, a merchant computer, an account issuer computer, and an account holder device) paired with a prescribed functionality (providing enhance security for an electronic transaction using electronic messaging) that is directly related to the structure, by reciting a method that resolves a specifically identified problem.

(*id.* 22). Lastly, Appellant analogizes the facts to *BASCOM Global Internet Serv., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1351 (Fed. Cir. 2016), contending the "limitations within the elements of the independent claims are directed to a specific method for performing an electronic transaction which solves a problem rooted in computerized payment account transactions systems that is <u>not</u> directed to an abstract idea under the *Alice* test" (*id.*).

We agree with Appellant that *Berkheimer* mandates evidence showing the claim elements were well-understood, routine, and conventional in the prior art is necessary to satisfy *Alice* step two.

In this case, the Examiner has provided abundant evidence, particularly in the obviousness analysis, demonstrating that both the process steps and the structural components of the claim were well-understood, routine, conventional in the field (*see* FF 1–16, Spec. 3:7, 17; 5:29; and 12:4–5, 27). Indeed, the prior art establishes that performing electronic authorization and authentication transactions using personal devices, merchant computers and interchange networks is well known (FF 1–16). In

addition, Kagan evidences that the prior art was aware of "third party systems, which broker payments among a consumer, the merchant, and the consumer's bank or other billing service provider" (Kagan ¶ 8). Because we affirmed the Examiner's obviousness rejection for the reasons given above, we also rely on the evidence relied upon in that determination to show that the claim elements were well-understood, routine, and conventional.

We are not persuaded by Appellant's argument related to *BASCOM*. In *BASCOM*, the Federal Circuit found the patent claimed "a technology-based solution (not an abstract-idea-based solution implemented with generic technical components in a conventional way) to filter content on the Internet that overcomes existing problems with other Internet filtering systems." *BASCOM*, 827 F.3d at 1351. Unlike *BASCOM*, claim 1 recites an abstract-idea-based solution, i.e., a mental process and method of organizing human activity for authorizing and authenticating transactions using a computer network but does not indicate or identify any unconventional components in the analysis.

While Appellant states that the claims are inventive based on "nonconventional and non-generic arrangement of known, conventional pieces" (Appeal Br. 22), we are not persuaded that the evidence of record supports this position because, as discussed above, the process is identical to that performed by the ordinary consumer, merchant, and interchange network in the process of purchasing goods (FF 1–16). Therefore, unlike *BASCOM*, the invention at issue is not "a software-based invention that improves the performance of the computer system itself." 827 F.3d at 1351 (bracketed alteration and quotation marks omitted).

Instead, we find the claimed invention more akin to the claims in *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 714 (Fed. Cir. 2014). In *Ultramercial*, like the instant case, the patentee argued that its claims were "directed to a specific method of advertising and content distribution that was previously unknown and never employed on the Internet before." *Ultramercial*, 772 F.3d at 714. However, *Ultramercial* found that the majority of the steps were directed to the abstract idea of offering media content in exchange for viewing an advertisement, and the "routine additional steps[,] such as updating an activity log, requiring a request from the consumer to view the ad, restrictions on public access, and use of the Internet[,]" and, as such, were insufficient to transform the patent-ineligible abstract idea into patent-eligible subject matter. *Id*. at 715–16.

Here, while the claims recite a specific abstract idea for authorizing and authenticating transactions using a computer network, that idea does not alter the computer itself in any structural way and we see no meaningful distinction between this type of financial industry practice and "the concept of intermediated settlement" held to be abstract in *Alice*, 573 U.S. at 219. The facts here are superior to those in *Credit Acceptance*, where the court found "[t]he invention's 'communication between previously unconnected systems—the dealer's inventory database, a user credit information input terminal, and creditor underwriting servers,' . . . does not amount to an improvement in computer technology." *Credit Acceptance Corp. v. Westlake Services*, 859 F.3d 1044, 1055 (Fed. Cir. 2017). Here, the prior art demonstrates that the computers involved in the authorizing and authenticating transactions were already known to be connected systems

used for the same purpose of authorizing and authenticating transactions (FF 1–16).

Lastly, Appellant contends the independent claims "recite a specific electronic transaction authentication process that clearly does not tie up all applications for 'authorizing and authenticating purchase transactions with invoices.'" (Appeal Br. 24).

We are not persuaded. While preemption is a concern underlying the judicial exceptions, it is not a stand-alone test for determining eligibility. *Rapid Litig. Mgmt. v. CellzDirect, Inc.*, 827 F.3d 1042, 1052 (Fed. Cir. 2016). "[W]e have consistently held that claims that are otherwise directed to patent-ineligible subject matter cannot be saved by arguing the absence of complete preemption." *Return Mail, Inc. v. United States Postal Service*, 868 F.3d 1350, 1370 (Fed. Cir. 2017). Moreover, we note that these claims would preempt the combination of the methods of Pourfallah and Kagan, and perhaps even Pourfallah alone, and therefore there is a significant risk of preemption.

The rejection of the claims under 35 U.S.C. § 101 is affirmed.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–10, 14–20	103	Pourfallah, Kagan	1–10, 14–20	
11, 13	103	Pourfallah, Kagan, Tarvydas	11, 13	
12	103	Pourfallah, Kagan, Tarvydas, Lucas	12	
1–20	101	Eligibility	1–20	

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
Overall Outcome			1–20	

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

AFFIRMED