APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/325,288	12/01/2008	Guy Jonathan James Rackham	END920070276US1	1194

103765   7590   07/06/2020
IBM Corp-Rochester Drafting Center
1701 North Street Building 256-3
Department SHCB
Endicott, NY 13760

EXAMINER
CHONG CRUZ, NADJA N

ART UNIT	PAPER NUMBER
3623	

NOTIFICATION DATE	DELIVERY MODE
07/06/2020	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GUY JONATHAN JAMES RACKHAM

Appeal 2019-003802
Application 12/325,288
Technology Center 3600

Before DANIEL J. GALLIGAN, JESSICA C. KAISER, and
DAVID J. CUTITTA II, *Administrative Patent Judges*.

CUTITTA, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant[1] appeals from the
Examiner's decision to reject claims 1–10, 12, and 14–20.[2] 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(a). Appellant identifies the real party in interest as International
Business Machines, Inc. Appeal Br. 3.
[2] Claims 11 and 13 have been cancelled.

CLAIMED SUBJECT MATTER

According to Appellant, the claims are directed to a method and system for generating a business architecture by decomposing an asset based model of the business to a threshold level of decomposition.[3] Abstract. Claim 1, reproduced below with bracketed lettering added for discussion purposes, is representative of the claimed subject matter:

> 1.   A method implemented on a computer of developing an architecture for a business, comprising:
>
> [a] decomposing an asset based model of the business to a threshold level of decomposition of business components, the asset based model being comprised of said business components formed by partitioning the assets of the business into non-overlapping and collectively complete parts, each business component being defined by an asset type of the business and a mechanism for commercializing said asset type to produce a value for the business,
>
> [b] wherein the assets that are partitioned include employee types,
>
> [c] wherein the mechanism for commercializing an employee type asset is an employee role;
>
> [d] defining said threshold level of decomposition in said partitioning as a level where each decomposed asset type and corresponding commercialization mechanism at the threshold level and levels above the threshold level has one and only one parent, and at least two decomposed assets and corresponding

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[3] This Decision refers to: (1) Appellant's Specification filed December 1, 2008 ("Spec."); (2) the Final Office Action ("Final Act.") mailed May 31, 2018; (3) the Advisory Action ("Adv. Act.") mailed July 25, 2018; (4) the Appeal Brief ("Appeal Br.") filed October 31, 2018; (5) the Examiner's Answer ("Ans.") mailed February 22, 2019; and (5) the Reply Brief ("Reply Br.") filed April 15, 2019.

commercialization mechanisms at the threshold level have at least one child in common,

[e] wherein the threshold level of decomposition is defined such that an employee role at the threshold level is defined so as not to include potential roles that are performable by other components with employee type assets;

[f] associating each asset type and corresponding commercialization mechanism at the threshold of decomposition with an elemental design element from an industry component business model (CBM) map within which the business competes;

[g] providing, with a computer system, a display of the industry CBM map; and

[h] providing a capability of selecting business components from the industry CBM map and creating a CBM map of the selected components adapted to the business.

REJECTION

Claims 1–10, 12, and 14–20 stand rejected under 35 U.S.C. § 101 as directed to patent-ineligible subject matter. Final Act. 2–7.

Our review in this appeal is limited to the above rejection and the issues raised by Appellant. Arguments not made are waived. *See* MPEP § 1205.02; 37 C.F.R. § 41.37(c)(1)(iv) (2018).

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 U.S. Supreme Court has long interpreted 35 U.S.C. § 101 to include implicit exceptions: "[l]aws of nature, natural phenomena, and abstract ideas" are not patentable. *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 Court's two-step framework, described in *Alice* and *Mayo*. *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 recites. *See Alice*, 573 U.S. at 219 ("On their face, the claims before us are drawn to the concept of intermediated settlement, *i.e.*, the use of a third party to mitigate settlement risk."); *see also Bilski v. Kappos*, 561 U.S. 593, 611 (2010) ("Claims 1 and 4 in petitioners' application explain the basic concept of hedging, or protecting against risk.").

If the claim recites an abstract idea, we turn to the second step of the *Alice* and *Mayo* framework, in which "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 and citation 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 Office published revised guidance on the application of § 101. 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) (hereinafter "Guidance"). Recently, the USPTO published an update to that guidance. October 2019 Patent Eligibility Guidance Update, 84 Fed. Reg. 55,942 (Oct. 18, 2019) (hereinafter "Guidance Update"). Under the Guidance and the Guidance Update, in determining whether a

claim falls within an excluded category, we first look to whether the claim

recites:

> (1) Step 2A — Prong One: any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human activity, such as a fundamental economic practice, or mental processes); and

> (2) Step 2A — Prong Two: additional elements that integrate the judicial exception into a practical application (*see* MPEP[4] § 2106.05(a)–(c), (e)–(h)).

See Guidance, 84 Fed. Reg. 54–55 ("Revised Step 2A"). 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 (Step 2B):

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

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

See id. at 56 ("*Step 2B: If the Claim Is Directed to a Judicial Exception,*

Evaluate Whether the Claim Provides an Inventive Concept.").

<div align="center">ANALYSIS</div>

Patent Eligibility

We analyze the claims and the Examiner's rejection in view of the

Guidance and the Guidance Update, and we adopt the nomenclature for the

steps used in the Guidance. Appellant's arguments refer to limitations

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[4] All Manual of Patent Examining Procedure ("MPEP") citations herein are to MPEP, Rev. 08.2017, January 2018.

recited in claim 1. *See* Appeal Br. 21–38. We, thus, select independent claim 1 as representative. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Step 1

As an initial matter, the claims must recite at least one of four recognized statutory categories, namely, machine, process, article of manufacture, or composition of matter. MPEP § 2106(I); *see* 35 U.S.C. § 101. Independent claim 1 recites a method, and claims 12 and 18 recite a computer implemented system. Thus, the pending claims recite recognized statutory categories under § 101, i.e., processes and machines, and we turn to the two-step *Alice/Mayo* analysis applied in accordance with the Guidance.

Step 2A, Prong One in the Guidance

Next, we determine whether claim 1, being directed to a statutory class of invention, nonetheless recites a judicial exception. Guidance 51.

The Examiner determines that exemplary claim 1 recites a judicial exception: an abstract idea. Ans. 4. In particular, the Examiner determines the claim recites a process for "developing an architecture/map for an asset based model of a business" (Final Act. 2; Adv. Act. 2), or, more specifically, "how to decompose an asset based model of a business components into asset types that include[] employee types and [a] mechanism for commercialization that includes an employee role, associating the asset types and their corresponding commercial mechanism with an elemental design element" (Ans. 6–7). Correspondingly, and consistent with the Guidance, the Examiner determines that such limitations are certain methods of organizing human activity. *Id.* The Examiner also determines that the

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claim recites "collect[ing] information (assets), then analyz[ing] the collected information (assets into business components, employee types, mechanisms for commercialization, associating with elemental design, defining threshold levels) and displaying certain results of the collection and analysis (an industry component business model CBM map)." Final Act. 5; Adv. Act. 2. According to the Guidance Update, when recited at a high level of generality, collecting, analyzing, and displaying information "recite a mental process when [the claim] contain[s] limitations that can practically be performed in the human mind." Guidance Update 7. As such, the claim recites "multiple abstract ideas, which may fall in the same or different groupings" of abstract ideas, namely, a certain method of organizing human activity and a mental process. *Id.* at 2.

Appellant argues that, instead, the claim is "specifically drawn to a practical visual interface for users generated by a new and specific set of rules" (Appeal Br. 25), "provid[ing] a new visual interface ('providing . . . a display of the industry CBM map') and a unique user interaction/manipulation capability through that interface ('providing a capability of selecting business components from the industry CBM map and creating a CBM map of the selected components adapted to the business')" (*id.* at 22–23 (emphases omitted)). Appellant further argues the claim is "directed to patent eligible subject matter because there is no court precedent identifying the claimed concepts as abstract ideas." *Id.* at 22 (citations omitted); Reply Br. 5. And, in a related argument, Appellant argues the Examiner "merely identifies specific limitations and declares them as an abstract idea without providing any precedent or substantive determination as to how they came to that conclusion." Reply Br. 2.

We agree with the Examiner that the claim recites a certain method of organizing human activity as well as collecting, analyzing, and displaying information, i.e., a mental process. The Specification describes that the invention is drawn to a business problem and corresponding business solution — namely "developing an asset based business architecture" (Spec. 8:23–24), i.e., a certain technique to generate a business plan. The Specification initially states that there are "shortfalls in current approaches to business architecture" (*id.* at 2:12–13) and, further,

> business design often ends up as a disparate collection of models, each attuned to a specific feature but without any assurance that a change in market conditions will not make many of them obsolete and without a coordinating framework to bring them together into an integrated whole that has reasonable prospects for enough stability over time that the business can concentrate its resources on serving the market place profitably

(*id.* at 8:1–9). The corresponding solution to that problem is to use a particular "business design technique" (*id.* at 10:21–26) or "business design methodology" (*id.* at 14:5–6) — namely, a component business model ("CBM") "design structure for logical organization of the enterprise [that] contains components that are reusable within and even across industries" (*id.* at 31:29–32:6). The Specification states that the "component business map itself represents a distillation of the activities of the enterprise to form a logical mapping from the enterprise." *Id.* at 26:18–21. That is, the Specification suggests that the CBM map is a logical structure that organizes information, as shown by Appellant's Figure 5B, reproduced below.
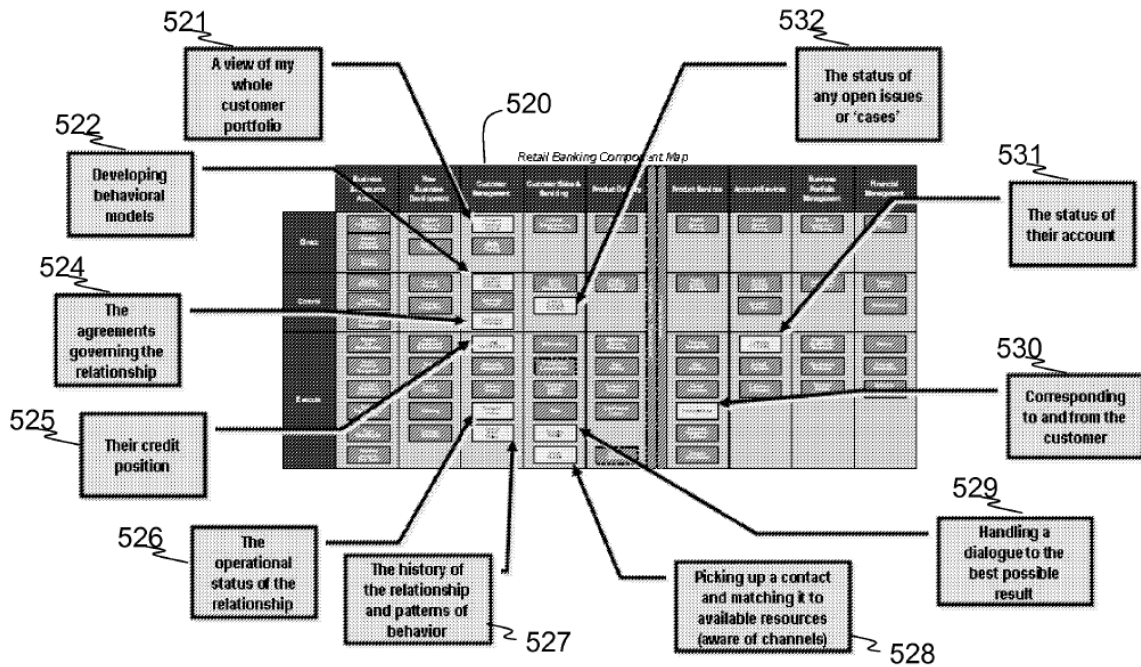
Figure 5B

Indeed, Figure 5B shows a "*Retail Banking*" CBM map as a table that organizes business information. *See id.* at 51:1–3; *see* Fig. 5A.

The business design technique or methodology, i.e., the creation and use of CBM maps, includes steps for "identifying a general collection of asset types" that can be commercialized; such assets include "employees, production capacity, buildings and facilities, intellectual property." *Id.* at 14:7–19. Further, "[b]y applying a structured decomposition of the commercial assets and their uses down to the threshold of decomposition where the elemental items of design are exposed, a collection of mutually independent business control elements can be defined" and "can be associated with different business design blueprints" so that "aspects of business control systems [can] be re-used in the equivalent deployment of business architecture." *Id.* at 59:5–16. That is, business assets in a current business are identified and then reused in a different business plan. For

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example, the Specification describes re-allocating staff in order to execute a business unit plan. *Id.* at 52:25–53:2, Figs. 5C–5D.

The majority of the limitations recited in claim 1 reflect the business design technique or methodology described by the Specification. Limitation [a] describes identifying business assets and components that can be commercialized by "decomposing an asset based model of the business to a threshold level of decomposition." Limitation [b] details that business asset types include employees and limitation [c] details that employees are commercialized based on their roles. Limitations [d] and [e] further detail the threshold level of decomposition. Then, in limitation [f], the decomposed assets and asset commercialization are "associat[ed]" with "an industry component business model (CBM) map." Aside from being implemented on "a computer system," which we discuss at a later step in our analysis, limitation [g] describes the presentation of the created industry CBM map. Taken together, limitations [a]–[g] recite a process of collecting and identifying valuable business component and asset information, e.g., employees, and then analyzing that identified business information to organize the business information into a particular logical organizational structure, i.e., a CBM map. Those limitations describe the type of information that is being collected and analyzed but do not detail the particulars of *how* that information is analyzed. For example, the claim recites "decomposing an asset" to a "threshold level of decomposition" but only describes what the threshold level of decomposition is, rather than how decomposition is performed. That is, the claim broadly recites the *result*, rather than how the result is achieved. As such, the broadly claimed, high-level decomposition analysis and related CBM map association can be

practically performed in the human mind, and, so, recites a mental process. Guidance Update 7. Furthermore, the analysis of business components to organize business relationships and to structure a business may also be characterized as a certain method of organizing human activity. *See* Guidance 52, n.13 (citing *In re Ferguson*, 558 F.3d 1359, 1364 (Fed Cir. 2009)).

Limitation [h], recites, in pertinent part, selecting the business components that were organized into the industry CBM map in order to create a different CBM map using those selected business components. Accordingly, limitation [h] recites a process of selecting business information to create a new business design or business plan. Such processes focus on structuring a business and, as such, are certain methods of organizing human activity, as the Examiner determines. Ans. 6; *see* Guidance 52, n.13 (citing *Ferguson*, 558 F.3d at 1364).

Appellant's arguments do not persuade us that the Examiner erred in determining the claim recites certain methods of organizing human activity and at least one mental process. Appellant asserts that claim 1 is "drawn to a practical visual interface for users generated by a new and specific set of rules" that the user can interact with. Appeal Br. 25; *see* Appeal Br. 22–23. But, as discussed above, rather than being directed to some new computer interface, both the claim and the Specification describe the invention in terms of an improved manner of making organizational business decisions. Further, to the extent that the claim recites some "visual interface" that users can interact with, the claimed "visual interface" at most displays business information in a particular logical structure — a CBM map — and allows users to select that business information. But, a "purportedly new

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arrangement of generic information that assists [users] in processing information more quickly" does not confer patent-eligibility. *Trading Techs. Int'l, Inc. v. IBG LLC*, 921 F.3d 1084, 1093 (Fed. Cir. 2019), *cert. denied*, 140 S. Ct. 954, 206 L. Ed. 2d 119 (2020). Rather than a computer interface, the CBM map provided by a computer is more like a Venn diagram, or some other visualization of information, provided by a computer, to aid a user in viewing the selected components.

We disagree with Appellant that the Examiner "merely identifies specific limitations and declares them as an abstract idea without providing any . . . substantive determination as to how [the Examiner] came to that conclusion." Reply Br. 2–3. The Examiner has fairly categorized the claim as a certain method of organizing human activity by explaining that the limitations recite a business model that groups and analyzes business assets using a logical structure to organize information. *See* Ans. 6–7; *see* Adv. Act. 2; *see* Final Act. 5, 7–8. To the extent Appellant argues that the Examiner's description of the claimed invention is not detailed enough (*see* Reply Br. 3), the level of abstraction at which the Examiner describes the invention does not change the accuracy of the Examiner's determination. *See Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1240 (Fed. Cir. 2016) ("An abstract idea can generally be described at different levels of abstraction."). Even if the Examiner's description of the claimed invention is at a high-level, as discussed above, the Examiner's determination is supported by the Specification and the claim.

Accordingly, as the Examiner determines, the claim recites a certain method of organizing human activity and a mental process.

Step 2A, Prong Two in the Guidance

Next, we determine whether the claim is directed to the abstract concept itself or whether the claim is instead directed to some technological implementation or application of, or improvement to, this concept, i.e., integrated into a practical application. *See, e.g.*, *Alice*, 573 U.S. at 223 (discussing *Diamond v. Diehr*, 450 U.S. 175, 177 (1981)).

The Examiner determines that the "judicial exception" recited in the claim "is not integrated into a practical application because the additional element of the claim[,] such as a computer/computer system," is used "as a tool to perform an abstract idea and/or generally links the use of a judicial exception to a particular technological environment." Ans. 7.

Appellant argues the claim recites an improved user interface, similar to the claims in *Core Wireless Licensing S.A.R.L., v. LG Electronics, Inc.*, 880 F.3d 1356 (Fed. Cir. 2018). Appeal Br. 25–28. Appellant's reliance on *Core Wireless* is misplaced.

In determining that the claims in *Core Wireless* were directed to an improved user interface, our reviewing court relied on the "specification confirm[ing] that [the] claims disclose an improved user interface for electronic devices, particularly those with small screens." *Core Wireless*, 880 F.3d at 1363. Unlike *Core Wireless*, the Specification here confirms that the invention reflects business improvements, e.g., analyzing and organizing the constituent components of a business, as discussed above. For example, the Specification describes the business-organizational invention with analogies to building design, stating, e.g.,

> [b]y applying a structured decomposition of the commercial assets and their uses down to the threshold of decomposition where the elemental items of design are exposed,

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> a collection of mutually independent business control elements
> can be defined, that as with types of room, can be associated with
> different business design blueprints. Just as the elemental design
> of a type of room, such as a kitchen (and indeed aspects of its
> physical realization) can be redeployed in different buildings, so
> can aspects of business control systems be re-used in the
> equivalent deployment of business architecture.

Spec. 59:5–16; *see* Spec. 56:26–57:7.

Furthermore, unlike the claim here, the claims in *Core Wireless* recited a number of features specific to user interface improvements: "a particular manner by which the summary window," i.e., a user interface element, "must be accessed;" "restrain[ing] the type of data that can be displayed in the summary window;" and "requir[ing] that the device applications exist in a particular state." *Core Wireless*, 880 F.3d at 1362–63. The claim here has no such limitations describing specific improvements or features for a user interface. Instead, the claim merely recites using a computer to display information and using a computer to select that information, i.e., "providing, with a computer system, a display of the industry CBM map" and "providing a capability of selecting business components from the industry CBM map," without any specific detail regarding how the display or selection of components are provided by the computer. As such, the claim "merely includes instructions to implement an abstract idea on a computer, or merely uses a computer as a tool to perform an abstract idea," which does not serve to integrate the abstract idea into a practical application. Guidance 55.

Even further, contrary to Appellant's argument that, when the claim is evaluated as a whole, the claimed CBM map is a "particular tool for presentation" and computer interaction (Appeal Br. 22–23, 32; Reply Br. 4–

5), the claim does not define a CBM map as some type of user interface particular to a computer. Instead, the claim recites placing analyzed business information into a CBM map; the CBM map, as discussed above, is a logical structure for organizing information, not a user interface. As such, even if the CBM map or the creation of the CBM map were an improvement, the improvement is to the abstract idea, rather than to computing or some other technology. Neither the computer's display nor interaction with the computer have been improved.

None of the other indicia of integration in the Guidance are present in the claim. Guidance 55; *see* MPEP § 2106.05(a)–(c), (e). For example, the claim does not recite a particular machine and, instead, generically recites a "method implemented on a computer." Therefore, we determine that the claim is not directed to a specific asserted technological improvement or otherwise integrated into a practical application. Consequently, we conclude the claim is "directed to" a judicial exception. Guidance 54.

Step 2B

Next, we determine whether the claim includes additional elements that provide significantly more than the recited judicial exception, thereby providing an inventive concept. *Alice*, 573 U.S. at 221 (quoting *Mayo*, 566 U.S. at 72–73).

The Examiner determines the claim "does . . . not include additional elements that are sufficient to amount to significantly more than the judicial exception." Ans. 8.

Appellant argues "Claim 1 identifies a particular tool for presentation and therefore recites 'significantly more.'" Appeal Br. 31 (emphasis

omitted). Appellant further argues "Claim 1 recites an interactive user interface, an interface which creates a business CBM map (the visual) in dependence on user selection of specific components of an industry CBM map (another visual)." *Id.* at 31; *see* Reply Br. 4–5. Appellant also argues "claim 1 requires 'new techniques for analyzing.'" Appeal Br. 33. Still further, Appellant argues the Examiner "excludes almost 100% of claim language from any Step 2B analysis whatsoever." *Id.* at 34 (emphasis omitted). Even further, Appellant argues the Examiner "has furnished zero evidence of why any recitations of claim 1 except for 'computer system' are well-known, routine, and conventional." *Id.* at 36 (emphasis omitted).

We are not persuaded. The majority of Appellant's arguments rely on the abstract idea, discussed above, to provide the "significantly more" of the Step 2B analysis. However, "the abstract idea itself . . . cannot supply the inventive concept that renders the invention 'significantly more' than that ineligible concept." *ChargePoint, Inc. v. SemaConnect, Inc.*, 920 F.3d 759, 774 (Fed. Cir. 2019) (citing *BSG Tech LLC v. BuySeasons, Inc.*, 899 F.3d 1281, 1290 (Fed. Cir. 2018)). As discussed above, creating a business plan by analyzing business information through use of logical structures to organize that business information, i.e., CBM maps, is part a certain method of organizing human activity. As such, Appellant's arguments that the claim includes "new techniques for analyzing" information and "a particular tool for presentation," i.e., CBM maps (Appeal Br. 31, 33), improperly rely on the abstract idea to provide significantly more than the abstract idea itself.

In the same vein, Appellant's argument that the Examiner "excludes almost 100% of claim language from any Step 2B analysis" (Appeal Br. 34–35 (emphasis omitted)) is unpersuasive of Examiner error because the

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Examiner determines that the vast majority of the claim language recites the abstract idea (*see* Final Act. 3), which does not supply the "significantly more" in the Step 2B analysis.

Further, Appellant's argument the Examiner "has furnished zero evidence of why any recitations of claim 1 except for 'computer system' are well-known, routine, and conventional" (Appeal Br. 36 (emphasis omitted)), again, improperly relies on the abstract idea to provide significantly more than the abstract idea itself. Even if the abstract idea were novel, the novelty of the abstract idea is not enough to save it from ineligibility. *See Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (Fed. Cir. 2016) ("[A] claim for a *new* abstract idea is still an abstract idea." (emphasis in original)). As such, the Examiner is not required to provide evidence that the limitations reciting the abstract idea are well-known, routine, and conventional in the Step 2B analysis. Guidance 56. The Examiner has correctly found, relying on the Specification, that the abstract idea is implemented using a generic computer performing routine computing functions. Ans. 11–12 (citing Spec. ¶ 44); Final Act. 9–10 (citing Spec. ¶ 42).

Additionally, Appellant argues the claim presents "zero concern of preempting a basic tool of scientific and technological work." Appeal Br. 38. Although "preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility." *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015). Where claims recite only patent-ineligible subject matter, as they do here, "preemption concerns are fully addressed and made moot." *Id.*

We, thus, conclude that claim 1 does not provide an inventive concept because any additional elements recited in the claim, considered individually and as an ordered combination, do not provide significantly more than the recited judicial exception. Accordingly, we are not persuaded that the claim recites patent-eligible subject matter. Further, Appellant has not proffered sufficient evidence or argument to persuade us that any of the limitations in remaining claims 2–10, 12, and 14–20 provide a meaningful limitation that transforms those claims into a patent-eligible application. *See* Appeal Br. 21–39. Therefore, we sustain the rejection of claims 1–10, 12, and 14–20 under U.S.C. § 101 as being directed to patent-ineligible subject matter.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–10, 12, 14–20	101	Eligibility	1–10, 12, 14–20	

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

AFFIRMED