UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE
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BEFORE THE PATENT TRIAL AND APPEAL BOARD
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Ex parte THOMAS L. PIERCE, JR.,
RANDALL K. MORGAN, and
CHARLES T. JOSEPH

————————

Appeal 2019–004084
Application 14/033,965
Technology Center 3600

————————

Before HUBERT C. LORIN, AMEE A. SHAH, and
ROBERT J. SILVERMAN, *Administrative Patent Judges.*

LORIN, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant appeals from the
Examiner's Final decision to reject claims 1–24.[1] 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 Comdata Inc. as the real party in interest.
Appeal Br. 3.

CLAIMED SUBJECT MATTER

The claimed subject matter relates to "managing fuel costs" (Spec. para. 1). Claim 1, reproduced below with emphasis added, is illustrative of the claimed subject matter:

1. A computer-implemented method *for determining fuel related scores and directing a fleet of trucks based thereon* from a processor, the method comprising steps of:

   aggregating, at a server, *a set of fleet preferences communicated to the server from one or more fleet systems by way of one or more messages, wherein the set of fleet preferences includes a weighting preference defining one or more predetermined weighting factors*;

   aggregating, at the server, *merchant data including one or more pricing agreements between one or more merchants and one or more fleets of trucks, wherein the merchant data is periodically updated to include latest agreements*;

   receiving, by the server from a fuel related data source via a communications network, *fuel related data, the fuel related data including*:

      first fuel pricing data for a first fuel provider location, which includes first discounted fuel pricing data based on a pre-negotiated agreement between a first fleet of trucks and the first fuel provider location, wherein the pre-negotiated agreement is stored as part of the merchant data, and

      second fuel pricing data for a second fuel provider location, which does not include a discount in fuel pricing with respect to the first fleet of trucks;

   receiving, by the server, *a request for fuel related scoring*;

   computing, by the server, *a first fuel related score corresponding to the request and the first fuel provider location, based on the first fuel pricing data and the one or more predetermined weighting factors*;

   computing, by the server, *a second fuel related score corresponding to the request and the second fuel provider location, based on the second fuel pricing data and the one or more predetermined weighting factors*;

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> *determining, based on a scoring preference of the set of*
> *fleet preferences whether at least one of the first fuel related*
> *score and the second fuel related score pass a threshold;*
> *responsive to the at least one of the first fuel related*
> *score and the second fuel related score passing the threshold,*
> *generating,* by the server, *a tailored fuel–related notification*
> *customized according to the set of fleet preferences;* and
> *transmitting,* by the server to a device on a truck via a
> communications interface, *the tailored notification, wherein the*
> *notification is customized to the truck according to a*
> *notification preference, the scoring preference, and the*
> *weighing preference, and wherein the notification directs the*
> *truck to at least one of the first fuel provider location or the*
> *second fuel provider location, thereby providing the device on*
> *the truck with information in at least one of realtime or pseudo-*
> *realtime.*

REJECTION

Claims 1–24 are rejected under 35 U.S.C. § 101 as being directed to judicially-excepted subject matter.

OPINION

The Appellant argues these claims as a group. *See* Appeal Br. 18–39. We select claim 1 as the representative claim for this group, and the remaining claims 1–24 stand or fall with claim 24. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Preliminary comment

Previous Office guidance on patent subject matter eligibility has been superseded by the 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019), hereinafter "2019 Revised 101 Guidance." *See* 2019 Revised 101 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, we will not address arguments on the sufficiency of the Examiner's position relative prior guidance but rather our analysis that follows will comport with the 2019 Revised 101 Guidance. We will pay particular attention to the Examiner's position taken in the Answer and Appellant's arguments made in the Reply Brief which are expressed in the context of the 2019 Revised 101 Guidance.

Introduction

35 U.S.C. § 101 provides that "[w]hoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor."

In that regard, claim 1 covers a "process" and is thus statutory subject matter for which a patent may be obtained.[2] This is not in dispute.

However, the 35 U.S.C. § 101 provision "contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable." *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208, 216 (2014) (quoting *Ass'n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)).

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[2] This corresponds to Step 1 of the 2019 Revised 101 Guidance which requires determining whether "the claim is to a statutory category." 84 Fed. Reg. at 53. *See also id.* at 53–54 ("consider[] whether the claimed subject matter falls within the four statutory categories of patentable subject matter identified by 35 U.S.C. 101.").

In that regard, notwithstanding claim 1 covers statutory subject matter, the Examiner has raised a question of patent eligibility on the ground that claim 1 is directed to an abstract idea.

Alice identifies a two-step framework for determining whether claimed subject matter is directed to an abstract idea. *Alice*, 573 U.S. at 217.

Alice step one — the "directed to" inquiry:

According to *Alice* step one, "[w]e must first determine whether the claims at issue are *directed to* a patent-ineligible concept." *Id.* at 218 (emphasis added).

The Examiner determined that claim 1 is directed to "determining fuel related scores and directing a fleet of trucks based thereon." Final Act. 4 (emphasis omitted). Specifically,

> [t]he claims recite *a method for determining fuel related scores and directing a fleet of trucks based thereon, comprising: aggregating a set of fleet preferences[], aggregating merchant data including one or more pricing agreements[], receiving fuel related data[], receiving a request for fuel related scoring[], computing a first fuel related score[], computing a second related score[], determining whether at least one of the first fuel related score and the second fuel related score pass a threshold[], generating a tailored fuel related notification customized according to the set of fleet preferences[], and transmitting a notification . . . thereby providing with information in at least one of realtime or pseudorealtime*, which can be performed in a computer and is similar to the kind of 'organizing human activity' which can be performed in a computer and is similar to the kind of 'organizing human activity' (e.g., concepts relating to interpersonal and intrapersonal activities, such as managing relationships or transactions between people, social activities, and human behavior; satisfying or avoiding a legal obligation; advertising, marketing, and sales activities or behaviors; and managing

> human mental activity), mathematical relationships/formulas,
> and is <u>an idea of itself</u>.

Id.

The Examiner's Answer (page 5) states:

> Independent claim 1 recites **Judicial Exception** (<u>an abstract
> idea enumerated in the 2019 PEG, a law of nature, or a natural
> phenomenon</u>) because the claim recites a method of organizing
> human activity (commercial or legal interactions including
> agreements in the form of contracts; legal obligations;
> advertising, marketing or sales activities or behaviors; business
> relations), then it falls within the "<u>Organizing human activity</u>"
> grouping of abstract ideas. Accordingly, **the claim recites an
> abstract idea**.

Appellant argues that the claims are not directed to an abstract idea
but rather "describe technical improvements to managing fueling." Appeal
Br. 19, 21 ("[I]mprovements to fueling management technology."); *see also*
Reply Br. 11 ("The instant claims recite a practical application at least by
relating to a technical improvement in managing fueling by efficiently
generating accurate, tailored notifications provided to vehicles in at least
pseudo-realtime."), and 14 ("[I]mprovement of more efficient and dynamic
processing.").

Accordingly, there is a dispute over whether claim 1 is directed to an
abstract idea. Specifically, is claim 1 directed to "determining fuel related
scores and directing a fleet of trucks based thereon" or "technical
improvements to managing fueling?" Final Act. 4; *see also* Appeal Br. 19.

Claim Construction[3]

We consider the claim as a whole giving it the broadest reasonable construction as one of ordinary skill in the art would have interpreted it in light of the Specification at the time of filing.[4,5,6]

Claim 1 recites 9 steps "for determining fuel related scores and directing a fleet of trucks based thereon." Claim 1, preambles. They are:

1. "aggregating" A;

2. "aggregating" B;

3. "receiving" C;

4. "receiving" D;

5. "computing" E;

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[3] "[T]he important inquiry for a § 101 analysis is to look to the claim." *Accenture Glob. Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1345 (Fed. Cir. 2013). "In *Bancorp Servs., L.L.C. v. Sun Life Assurance Co. of Can.*, 687 F.3d 1266, 1273 (Fed. Cir. 2012), the court observed that 'claim construction is not an inviolable prerequisite to a validity determination under § 101.' However, the threshold of § 101 must be crossed; an event often dependent on the scope and meaning of the claims." *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1347–48 (Fed. Cir. 2015).
[4] "In determining the eligibility of respondents' claimed process for patent protection under § 101, their claims must be considered as a whole." *Diamond v. Diehr*, 450 U.S. 175, 188 (1981).
[5] "First, it is always important to look at the actual language of the claims. . . . . Second, in considering the roles played by individual limitations, it is important to read the claims 'in light of the [S]pecification.'" *Smart Sys. Innovations, LLC v. Chicago Transit Auth.*, 873 F.3d 1364, 1378 (Fed. Cir. 2017) (J. Linn, dissenting in part and concurring in part) (citing *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016)), among others.

[6] *See* 2019 Revised 101 Guidance, page 52, footnote 14 ("*If a claim, under its broadest reasonable interpretation.*") (emphasis added).

6. "computing" F;

7. "determining" G;

8. "responsive to" G, "generating" H; and

9. "transmitting" I "thereby providing [a] device on [a] truck with information in at least one of realtime or pseudo-realtime."

Where,

A is "a set of fleet preferences . . . by way of one or more messages, wherein the set of fleet preferences includes a weighting preference defining one or more predetermined weighting factors;"

B is "merchant data including one or more pricing agreements between one or more merchants and one or more fleets of trucks, wherein the merchant data is periodically updated to include latest agreements;"

C is "fuel related data, the fuel related data including:

[C1] first fuel pricing data for a first fuel provider location, which includes first discounted fuel pricing data based on a pre-negotiated agreement between a first fleet of trucks and the first fuel provider location, wherein the pre-negotiated agreement is stored as part of the merchant data, and
[C2] second fuel pricing data for a second fuel provider location, which does not include a discount in fuel pricing with respect to the first fleet of trucks;"

D is "a request for fuel related scoring;"

E is "a first fuel related score corresponding to the request [i.e., D] and the first fuel provider location, based on the first fuel pricing data [i.e., C1] and the one or more predetermined weighting factors [i.e., A];"

F is "a second fuel related score corresponding to the request [i.e., D] and the second fuel provider location, based on the second fuel pricing data [i.e., C2] and the one or more predetermined weighting factors [i.e., A];"

G is "based on a scoring preference of the set of fleet preferences whether at least one of the first fuel related score [i.e., E] and the second fuel related score [i.e., F] pass a threshold;"

H is "a tailored fuel–related notification customized according to the set of fleet preferences;" and,

I is "the tailored notification, wherein the notification is customized to the truck according to a notification preference, the scoring preference [i.e., G], and the weighing preference [i.e., A], and wherein the notification directs the truck to at least one of the first fuel provider location or the second fuel provider location."

Claim 1 employs "a server;" "one or more fleet systems;" "a fuel related data source;" "a communications network;" "a device on a truck;" and "a communications interface."

More specifically, steps 1 and 2 are performed "*at* a server" while steps 3–6 and 8 and 9 are performed "*by* the server." Appeal Br. 40–41, Claims App. (emphasis added). Step 1 aggregates data communicated "to the server" "from one or more fleet systems" while Steps 3 and 9 receive and transmit data "by the server" from/to other devices; i.e., "by the server from a fuel related data source via a communications network" and "by the server to a device on a truck via a communications interface," respectively. Appeal Br. 40–41, Claims Appendix (claim 1, Step 7), which determines whether certain scores pass a threshold, is not attached to any device and therefore is reasonably broadly construed to cover performing it by any

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means, including purely mentally. This is also the case for the periodic

updating of the merchant data to include latest agreements set forth in step 2.

Claim 1 is reasonably broadly construed as a scheme for determining

fuel related scores and directing a fleet of trucks based thereon.

The Specification states that

it would be beneficial to enable trucking service providers to
manage fuel costs based on meaningful, accurate, and up-to-
date fuel-related data centrally aggregated from various sources.
It would also be beneficial to enable trucking service providers
to analyze, in a timely manner, how individual fuel purchases
factor into overall fuel expenses.

Spec., para. 3.

The example embodiments herein provide systems, methods,
and computer program products for managing fuel costs. Fuel-
related data, including a request for authorization of a fuel
transaction, is received from a fuel-related data source via a
communications network. A fuel-related score is computed
based on the fuel-related data and a predetermined weighting
factor. The fuel-related score is presented through a user
interface.

Id. para. 4.

Given the method as claimed as reasonably broadly construed above

and in light of the Specification's description of the objective of the

invention, we reasonably broadly construe claim 1 as being directed to

determining fuel related scores and directing a fleet of trucks based thereon.

The Abstract Idea[7]

Above, where we reproduce claim 1, we identify in italics the limitations we believe recite an abstract idea.[8] Based on our claim construction analysis (above), we determine that the identified limitations describe a scheme for determining fuel related scores and directing a fleet of trucks based thereon. Determining fuel related scores and directing a fleet of trucks based thereon is a commercial interaction. It falls within the enumerated "[c]ertain methods of organizing human activity" as grouping of abstract ideas set forth in the 2019 Revised 101 Guidance.[9]

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[7] This corresponds to Step 2A of the 2019 Revised 101 Guidance. Step 2A determines "whether a claim is 'directed to' a judicial exception," such as an abstract idea. Step 2A is two prong inquiry.

[8] This corresponds to Prong One (a) of Step 2A of the 2019 Revised 101 Guidance. "To determine whether a claim recites an abstract idea in Prong One, examiners are now to: (a) Identify the specific limitation(s) in the claim under examination (individually or in combination) that the Examiner believes recites an abstract idea." 84 Fed. Reg.. at 54.

[9] This corresponds to Prong One ["Evaluate Whether the Claim Recites a Judicial Exception"] (b) of Step 2A of the 2019 Revised 101 Guidance. "To determine whether a claim recites an abstract idea in Prong One, examiners are now to: . . . (b) determine whether the identified limitation(s) falls within the subject matter groupings of abstract ideas enumerated in Section 1 of the [2019 Revised 101 Guidance]." 84 Fed. Reg. at 54. This case implicates subject matter grouping "(b):" "(b) Certain methods of organizing human activity—fundamental economic principles or practices (including hedging, insurance, mitigating risk); commercial or legal interactions (including agreements in the form of contracts; legal obligations; advertising, marketing or sales activities or behaviors; business relations); managing personal behavior or relationships or interactions between people (including social activities, teaching, and following rules or instructions)." *Id.* at 52.

Technical Improvement[10] (Appellant's Argument)

Our characterization of what the claim is directed to is the same as the Examiner's, albeit the Examiner adding several claim limitations to the characterization and thus characterized it at a lower level of abstraction. "An abstract idea can generally be described at different levels of abstraction." *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1240, 1241 (Fed. Cir. 2016) ("The Board's slight revision of its abstract idea analysis does not impact the patentability analysis.").

We have reviewed the record and are unpersuaded as to error in our or the Examiner's characterization of what claim 1 is directed to.

A principle argument Appellant makes is that the claimed subject matter is not directed to an abstract idea but rather to a technical improvement. However, we do not find that the record adequately supports it.

Appellant argues that a technical improvement is achieved by, for example,

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[10] This corresponds to Prong Two ["If the Claim Recites a Judicial Exception, Evaluate Whether the Judicial Exception Is Integrated Into a Practical Application"] of Step 2A of the 2019 Revised 101 Guidance. "A claim that integrates a judicial exception into a practical application will 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." 84 Fed. Reg. at 54. One consideration, implicated here, that is "indicative that an additional element (or combination of elements) may have integrated the exception into a practical application" is if "[a]n additional element reflects an improvement in the functioning of a computer, or an improvement to other technology or technical field." *Id.* at 55.

- "efficiently generating accurate, tailored notifications provided to vehicles in at least pseudo-realtime (Appeal Br. 18);
- "centraliz[ing] processing of fuel-related data to efficiently generate tailored notifications that are provided to vehicles in at least pseudo-realtime" (*id*. at 19);
- "improving accuracy, efficiency, and display of a tailored fuel-related notification communicated to a device on a truck to direct the truck to particular fuel provider locations" (*id*. at 20);
- "processing fueling data at a single location" (*id*. at 22);
- "aggregating and processing periodically updated merchant data" (*id*. at 23);
- not "wast[ing] resources" (*id*. at 24);
- "[c]ustomiz[ing] notifications [which] provide the technical benefit of an improved user interface and the technical benefit of 'improv[ing] the ability of [a] computer to display information and interact with the user' (*id*. at 26, quoting from "USPTO July 2015 Update Appendix 1: Examples, p. 12 (discussing Example 23: Graphical User Interface for Relocating Obscured Textual Information" (footnote 15)); and,
- "more efficient and dynamic processing" (Reply Br. 14).

We have reviewed the Specification and have been unable to find any mention of these alleged improvements.

Appellant draws our attention to paragraphs 3, 57, and 65 of the Specification. Appeal Br. 22 (footnotes 8, 13, and 11, respectively). They disclose:

> [3] Given the foregoing, it would be beneficial to enable trucking service providers to manage fuel costs based on meaningful, accurate, and up-to-date fuel-related data centrally aggregated from various sources. It would also be beneficial to enable trucking service providers to analyze, in a timely manner, how individual fuel purchases factor into overall fuel expenses.

[57] In another example aspect herein, pricing agreement information relating to pre-negotiated agreements between merchants and fleets (e.g., discount pricing, discount conditions, discount time frame, discount location, and/or the like) is aggregated and stored in the memory or database included in, or coupled to, the server 102 for each of a plurality of fleets and/or merchants. The pricing agreement information is aggregated (e.g., periodically, automatically, or manually) by way of messages communicated to the server 102 from fleet systems and/or merchant systems (e.g., fuel-related data sources 101 of each fleet or each merchant) via the communication network 103. This enables scoring to be generated (block 303, described below) for each of a plurality of fleets while taking into account any contracts that the fleet may have pre-negotiated with merchants. By aggregating and storing fleet preferences and pricing agreement information, fleets may be provided, in realtime or pseudo-realtime, with meaningful and up-to-date information that they deem relevant and/or important regarding driver behavior, thus enabling the fleet to manage fuel costs by, for example, causing a timely change in driver behavior.

[65] The merchant data 214 includes information about merchants, such as, for example, a merchant name, a merchant type, a merchant address, coordinates (e.g., latitude and longitude) of a merchant location, a merchant identifier, agreement information that relates to agreements (e.g., pricing agreements) or contracts that a merchant has in place with one or more fleets, customers, or other entities, an identifier of an acquirer associated with a merchant, an identifier of an acceptor associated with the merchant, a terminal identifier, information about amenities offered by a particular merchant location, and/or the like. As described above, merchants may have pre-negotiated pricing agreements or contracts in place with one or more fleets, customers, or other entities. In one example embodiment, the merchant data 214 is periodically updated to include the latest such agreements. In this way, up-to-date and accurate fleet/merchant-specific pricing may be employed in

scoring computations to provide a user with an efficient means of viewing and acting on fuel spending patterns.

Paragraph 3 describes the invention's aspiration ("it would be beneficial"), not its technical improvements.

Paragraph 57 states (emphasis added): "aggregating and storing fleet preferences and pricing agreement information, fleets *may be provided*, in realtime or pseudo-realtime, with meaningful and up-to-date information that they deem relevant and/or important regarding driver behavior, *thus enabling the fleet to manage fuel costs by, for example, causing a timely change in driver behavior*." That the meaningful information *may be* provided in realtime or pseudo-realtime is not an indication that the claimed method achieves a technical improvement. Rather, it discloses a desired result. It should be noted that claim 1 makes no mention of causing a timely change in driver behavior. According to claim 1, a notification is transmitted to a device on a truck thereby providing the information in real/pseudoreal time. What happens after that is unclear.

Paragraph 65 states that "up-to-date and accurate fleet/merchant-specific pricing *may be employed* in scoring computations to provide a user with an efficient means of viewing and acting on fuel spending patterns." This, too, is a desired result, not a technical improvement. Also this disclosure concerns certain types of information which claim 1 is not limited to.

The Specification does not describe the claimed method as providing any improvement to technology, let alone fuel–management technology. Rather, the Specification discloses only non-technical aspirations; that is, the invention may provide "meaningful, accurate, and up-to-date fuel-related

data centrally aggregated from various sources." Spec., para. 3; *see also cf.*
Trading Techs. Int'l, Inc. v. IBG LLC, 921 F.3d 1378, 1384 (Fed. Cir. 2019)
("The claims are focused on providing information to traders in a way that
helps them process information more quickly, '556 patent at 2:26–39, not on
improving computers or technology.").

Appellant's technical-improvement argument is unpersuasive as to
error in the Examiner's or our characterization of what the claim is directed
to because the record evidence fails to adequately support it. The argument
alone cannot take the place of evidence in the record. *See generally In re*
Glass, 474 F.2d 1015, 1019 (CCPA 1973); *see also In re Pearson*, 494 F.2d
1399, 1405 (CCPA 1974); and *In re De Blauwe*, 736 F.2d 699, 705 (Fed.
Cir. 1984); and *In re Schulze*, 346 F.2d 600, 602 (CCPA 1965).

We have carefully reviewed the claim. Per our previous claim
construction analysis, claim 1 is reasonably broadly construed as covering a
scheme to determining fuel related scores and directing a fleet of trucks
based thereon. We see no specific asserted improvement in computer
capabilities recited in the claim. Nor does the Specification discuss any.
Rather than being directed to any specific asserted improvement in computer
capabilities, the claim and Specification support the opposite view — that
the claimed subject matter is directed to determining fuel related scores and
directing a fleet of trucks based thereon employing generic devices. *See*
Spec., paras. 52–55, 144 ("Useful machines for performing the operation of
the example embodiments presented herein include general-purpose digital
computers or similar devices.") and 145.

The claim provides no additional structural details that would
distinguish the recited "server;" "one or more fleet systems;" "fuel related

data source;" "communications network;" "device on a truck;" and "communications interface" from their generic counterparts.[11]

With respect to the "aggregating," "receiving," "computing," "determining," "generating," and "transmitting" steps, the Specification attributes no special meaning to any of these operations, individually or in the combination, as claimed. In our view, consistent with the Specification, these are common computer processing functions that one of ordinary skill in the art at the time of the invention would have known generic computers were capable of performing and would have associated with generic computers. *Cf. OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015)

> Beyond the abstract idea of offer-based price optimization, the claims merely recite "well-understood, routine conventional activit[ies]," either by requiring conventional computer activities or routine data-gathering steps. *Alice*, 134 S.Ct. at 2359 (quoting *Mayo*, 132 S.Ct. at 1294). . . . For example, claim 1 recites "sending a first set of electronic messages over a network to devices," the devices being "programmed to communicate," storing test results in a "machine-readable medium," and "using a computerized system . . . to automatically determine" an estimated outcome and setting a price. Just as in *Alice*, "all of these computer functions are 'well-understood, routine, conventional activit[ies]' previously known to the industry." *Alice*, 134 S.Ct. at 2359 (quoting *Mayo*, 132 S.Ct. at 1294) (alterations in original); *see also buySAFE[, Inc. v. Google, Inc.]*, 765 F.3d [1350,] 1355 [(Fed. Cir. 2014)] ("That a computer receives and

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[11] *Cf. Move, Inc. v. Real Estate Alliance Ltd.*, 721 F. App'x 950, 954 (Fed. Cir. 2018) (non-precedential) ("Claim 1 is aspirational in nature and devoid of any implementation details or technical description that would permit us to conclude that the claim as a whole is directed to something other than the abstract idea identified by the district court.").

sends the information over a network—with no further [S]pecification—is not even arguably inventive.").

At best, the "server;" "one or more fleet systems;" "fuel related data source;" "communications network;" "device on a truck;" and "communications interface" distinguish over other generic devices known at the time the application was filed in the *type* of electronic information being processed — such as, "merchant data," "fuel pricing data," and a "fuel related score[s]." But that alone is not patentably consequential. This is so because "[c]laim limitations directed to the content of information and lacking a requisite functional relationship are not entitled to patentable weight because such information is not patent eligible subject matter under 35 U.S.C. § 101." *Praxair Distribution, Inc. v. Mallinckrodt Hosp. Prods. IP Ltd.*, 890 F.3d 1024, 1032 (Fed. Cir. 2018).

Accordingly, within the meaning of the 2019 Revised 101 Guidance, we find there is no integration of the abstract idea into a practical application.

The Reply Brief argues, *inter alia*, that "[t]he instant claims recite a practical application at least by relating to a technical improvement in managing fueling by efficiently generating accurate, tailored notifications provided to vehicles in at least pseudo-realtime." Reply Br. 11. We disagree.

The argument does not adequately explain in what way claim 1 integrates the abstract idea (i.e., determining fuel related scores and directing a fleet of trucks based thereon) into a practical application. The associated discussion repeats the points made in the Appeal Brief to argue, unpersuasively, that the claimed process is directed to a technical improvement. Given that claim 1 does not reflect any such improvement and the record evidence fails to adequately support such an improvement for the

subject matter as broadly presented in claim 1, we do not see how the alleged improvement can nevertheless demonstrate an integration into a practical application.

The question is whether claim 1 goes beyond determining fuel related scores and directing a fleet of trucks based thereon in a "meaningful" way. According to the 2019 Revised 101 Guidance, "[a] claim that integrates a judicial exception into a practical application will 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." *See* 2019 Revised 101 Guidance, 84 Fed. Reg. at 53 (emphasis added). Managing fueling by efficiently generating accurate, tailored notifications provided to vehicles in at least pseudo-realtime as the objective for the invention in the technically–broad manner claimed (see the analysis in the claim construction section above) does not "apply, rely on, or use" said scheme so as to impose any meaningful limit on it. The record evidence weighs in favor of the view that the claim's focus is on nontechnical improvements, such as improving fuel management, not technical ones.

We have considered Appellant's other arguments challenging the Examiner's determination under step one of the *Alice* framework and find them unpersuasive. For the foregoing reasons, the record supports the Examiner's determination that claim 1 is directed to an abstract idea.

Alice step two — Does the Claim Provide an Inventive Concept?[12]

Step two is "a search for an 'inventive concept'—*i.e.,* an element or combination of elements that is 'sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.'" *Alice*, 573 U.S. at 217–18 (quoting *Mayo*, 566 U.S. at 73).

In that regard, the Examiner determined that the claim(s) do not include "additional elements" that are sufficient to amount to significantly more than the judicial exception because the additional computer elements, which are recited at a high level of generality, provide conventional computer functions that "do not [add] meaningful limitations to practicing the abstract idea." Ans. 6, 11; *see also* Final Act. 3. We agree.

We addressed the matter of whether there were any purported specific asserted improvements in computer capabilities in our analysis above under step one of the *Alice* framework. This is consistent with the case law. *See Ancora Techs., Inc. v. HTC Am., Inc.*, 908 F.3d 1343, 1347 (Fed. Cir. 2018) ("We have several times held claims to pass muster under *Alice* step one when sufficiently focused on such improvements."). Such an argument can also challenge a determination under step two of the *Alice* framework. *See buySAFE*, 765 F.3d at 1354–55. "[R]ecent Federal Circuit jurisprudence has indicated that eligible subject matter can often be identified either at the first

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[12] This corresponds to Step 2B, of the 2019 Revised 101 Guidance, 84 Fed. Reg. at 56 "if a claim has been determined to be directed to a judicial exception under revised Step 2A, examiners should then evaluate the additional elements individually and in combination under Step 2B to determine whether they provide an inventive concept (*i.e.,* whether the additional elements amount to significantly more than the exception itself)."

or the second step of the *Alice/Mayo* [framework]." *See* 2019 Revised 101 Guidance 53, n.17.

Be that as it may, we are unpersuaded that claim 1 presents an element or combination of elements indicative of a specific asserted improvement in computer capabilities, thereby rendering the claimed subject matter sufficient to ensure that the patent in practice amounts to significantly more than a patent upon a scheme for determining fuel related scores and directing a fleet of trucks based thereon employing a "server;" "one or more fleet systems;" "fuel related data source;" "communications network;" "device on a truck;" and "communications interface."

We have reviewed the Specification and, as explained above, we can find no suggestion of any improvements to the system as a result of performing the functions as broadly as they are recited.

We cited the Specification in our earlier discussion. It is intrinsic evidence that the claimed "server;" "one or more fleet systems;" "fuel related data source;" "communications network;" "device on a truck;" and "communications interface" as claimed is conventional. In doing so, we have followed "Changes in Examination Procedure Pertaining to Subject Matter Eligibility, Recent Subject Matter Eligibility Decision (*Berkheimer v. HP Inc.*[, 881 F.3d 1360 (Fed. Cir. 2018)]," USPTO Memorandum, Robert W. Bahr, Deputy Commissioner For Patent Examination Policy, April 19, 2018 (the "Berkheimer Memo")).

The court in *Berkheimer* held that "[t]he patent eligibility inquiry may contain underlying issues of fact." *See Berkheimer*, 881 F.3d at 1365 (quoting *Mortgage Grader, Inc. v. First Choice Loan Services Inc.*, 811 F.3d 1314, 1325 (Fed. Cir. 2016) ("The § 101 inquiry '*may* contain underlying

factual issues.'"")). But the court also held that "[w]hen there is *no genuine issue of material fact* regarding whether the claim element or claimed combination is well-understood, routine, [and] conventional to a skilled artisan in the relevant field, this issue can be decided on summary judgment as a matter of law." *Berkheimer*, 881 F.3d at 1368 (emphasis added). This qualification has been subsequently reiterated.

> If there is a genuine dispute of material fact, Rule 56 requires that summary judgment be denied. In *Berkheimer*, there was such a genuine dispute for claims 4–7, but not for claims 1–3 and 9.
>
> . . . .
>
> [I]n accordance with *Alice*, we have repeatedly recognized the absence of a genuine dispute as to eligibility for the many claims that 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, 890 F.3d 1369, 1371–73 (Fed. Cir. 2018) (Order, On Petition for rehearing en banc, May 31, 2018 (J. Moore concurring)); *see also Aatrix Software, Inc. v. Green Shades Software, Inc.*, 890 F.3d 1354, 1368 (Fed. Cir. 2018) ("A factual allegation or dispute should not automatically take the determination out of the court's hands; rather, there needs to be justification for why additional evidence must be considered—the default being a legal determination.").

Here, the Specification indisputably shows the recited "server;" "one or more fleet systems;" "fuel related data source;" "communications network;" "device on a truck;" and "communications interface" individually and in the context as claimed was conventional at the time of filing. Accordingly, there is sufficient factual support for the well–understood,

routine, or conventional nature of the claimed "server;" "one or more fleet systems;" "fuel related data source;" "communications network;" "device on a truck;" and "communications interface," individually or in the combination as claimed.

No other persuasive arguments having been presented, we conclude that no error has been committed in the determination under *Alice* step two that claim 1 does not include an element or combination of elements circumscribing the patent-ineligible concept it is directed to so as to transform the concept into an inventive application.

We have considered all of the Appellant's arguments (including those made in the Reply Brief) and find them unpersuasive.

Accordingly, because we are not persuaded as to error in the determinations that representative claim 1, and claims 2–24 which stand or fall with claim 1, are directed to an abstract idea and do not present an "inventive concept," we sustain the Examiner's conclusion that they are directed to patent-ineligible subject matter for being judicially-excepted from 35 U.S.C. § 101. *Cf. LendingTree, LLC v. Zillow, Inc.*, 656 F. App'x 991, 997 (Fed. Cir. 2016) ("We have considered all of LendingTree's remaining arguments and have found them unpersuasive. Accordingly, because the asserted claims of the patents in suit are directed to an abstract idea and do not present an 'inventive concept,' we hold that they are directed to ineligible subject matter under 35 U.S.C. § 101."); *see, e.g., OIP Techs.*, 788 F.3d at 1364; *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1098 (Fed. Cir. 2016).

CONCLUSION

The decision of the Examiner to reject claims 1–24 is affirmed.

More specifically:

The rejection of claims 1–24 under 35 U.S.C. § 101 as being directed to judicially-excepted subject matter is affirmed.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–24	101	Eligibility	1–24	

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