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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 OLEG MAKHOTIN and KIUSHAN PIRZADEH
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Appeal 2019-004215
Application 14/493,247
Technology Center 3600
_____

Before ULRIKE W. JENKS, JOHN G. NEW, and
MICHAEL A. VALEK, *Administrative Patent Judges*.

Opinion for the Board filed by *Administrative Patent Judge* VALEK.

Opinion Dissenting-in-Part filed by *Administrative Patent Judge* NEW.

VALEK, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant[1] submits this appeal under 35 U.S.C. § 134(a) involving
claims to methods and server computers for processing remote transactions,
which have been rejected for indefiniteness, obviousness, and as being
directed to patent-ineligible subject matter. We have jurisdiction under
35 U.S.C. § 6(b).

We REVERSE.

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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 Visa International Service
Association as the real party in interest. Appeal Br. 2.

STATEMENT OF THE CASE

Claims 1–7, 9–17, and 19 are on appeal, and can be found in the Claims Appendix. Claim 1 is representative. It provides as follows with labels added to identify steps A–F:

1. A method of processing a remote transaction initiated by a communication device, the method comprising:

[A] receiving, by a server computer, a payment request including encrypted payment information from the communication device, wherein the encrypted payment information is encrypted using a first encryption key, and wherein the encrypted payment information includes security information comprising user authentication data input into the communication device by a user of the communication device and device-specific security values associated with the communication device;

[B] decrypting, by the server computer, the encrypted payment information using a second encryption key;

[C] obtaining, by the server computer, an authentication response value for the remote transaction from an authentication computer associated with an account issuer, wherein the authentication computer validates the security information including the user authentication data and the device-specific security values before providing the authentication response value;

[D] updating, by the server computer, the decrypted payment information to include the authentication response value;

[E] re-encrypting, by the server computer, the decrypted payment information using a third encryption key; and

[F] sending, by the server computer, a payment response including the re-encrypted payment information to a transaction processor associated with the communication device, wherein the transaction processor decrypts the re-encrypted payment information using a fourth encryption key and initiates a payment transaction using the decrypted payment information.

Appeal Br. 26.

Appellant seeks review of the following grounds of rejection made by Examiner:

    I.   Claims 1 and 14 under 35 U.S.C. § 101 as directed to patent-ineligible subject matter.

    II.   Claims 1 and 14 under 35 U.S.C. § 112(b) for indefiniteness; and

    III.   Claims 1–7, 9–17, and 19 under 35 U.S.C. § 103 as obvious over Lee[2] in view of Spies[3] or alternatively Faith.[4]

See Appeal Br. 7–24.

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

I.   Subject Matter Eligibility

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 judicial exceptions: "[l]aws of nature, natural phenomena, and abstract ideas" are not patentable. *E.g.*, *Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208, 216 (2014).

In determining whether a claim falls within an excluded category, we are guided by the Supreme Court's two-step framework, described in *Alice*. *Id.* at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–77 (2012)). In *Alice* step one, we ask whether the claims are directed to an exception to patent eligibility, such as an abstract idea or law of nature. *Alice*, 573 U.S. at 218. In *Alice* step two, we examine the

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[2] US 2014/0222676 A1, published Aug. 7, 2014 ("Lee").
[3] US 2011/0137802 A1, published June 9, 2011 ("Spies").
[4] US 8,898,089 B2, issued Nov. 25, 2014 ("Faith").

elements of the claims to determine whether they contain an inventive concept sufficient to transform the claimed judicial exception into a patent-eligible application. *Mayo*, 566 U.S. at 71–72 (quoting *Alice*, 134 S. Ct. at 2355).

The Office published revised guidance on the application of the Supreme Court's *Alice* analysis in January 2019. USPTO's January 7, 2019 Memorandum, *2019 Revised Patent Subject Matter Eligibility Guidance,* 84 Fed. Reg. 50–57 ("2019 Guidance"). According to the 2019 Guidance, we look to whether the claim recites: (1) a judicial exception, including certain groupings of abstract ideas such as mathematical concepts and mental processes (Guidance Step 2A, prong 1); and (2) additional elements that integrate the judicial exception into a practical application (Guidance Step 2A, prong 2). Only if the claim recites a judicial exception and does not integrate that exception into a practical application, do we then examine whether the claim adds a specific limitation beyond the judicial exception that is not "well-understood, routine, conventional" in the field (Guidance Step 2B). *See* 2019 Guidance at 54–56. An update to the Guidance further elaborating on this analysis was recently published. USPTO's October 17, 2019 Memorandum, *October 2019 Update: Subject Matter Eligibility*, available at https://www.uspto.gov/sites/default/files/documents/peg_oct _2019 _update.pdf ("Guidance Update").

Examiner's Findings and Conclusions

Regarding *Alice* step one (Guidance Step 2A), Examiner determines that claim 1 "is directed to an algorithm which describes the concept of encrypting a payment, decrypting the payment and re-encrypting the payment information and sending a response including the encrypted

payment information." Final 3. For *Alice* step two (Guidance Step 2B), Examiner finds that the "functions performed by the machine at each step of the process are purely conventional" and do "no more than require a generic computer to perform generic computer functions." *See id.* at 4. Thus, Examiner concludes the "claim as a whole, does not amount to significantly more than the abstract idea itself." *Id.* at 5. Examiner comes to the same conclusion for the other claims. *See id.* at 5–6.

<div align="center">*Appellant's Contentions*</div>

Appellant disputes Examiner's rejection at both *Alice* steps. *See* Appeal Br. 8–14. In particular, Appellant contends Examiner's identification of the purported abstract idea is both inadequate and inconsistent, amounting to little more than a bare conclusion "the claims recite an 'algorithm,' and . . . are therefore not patent eligible." Reply Br. 2; *see also* Appeal Br. 8–9 (arguing that Examiner "has failed to clearly identify the 'abstract idea'"). According to Appellant, "the limitations in the claims [at issue here] do not fall within the subject matter groupings of the abstract ideas enumerated in Section I of the 2019 Guidance" because they do not recite a mathematical concept, mental process or method of organizing human activity. *See* Reply Br. 3–4.[5] Thus, in Appellant's view, the rejection fails at Step 2A, Prong 1 because the claims do not recite a judicial exception. *Id.*

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[5] The Office's 2019 Guidance was published after Appellant filed its Appeal Brief and about two months before Examiner's Answer. Appellant addresses the 2019 Guidance in its Reply Brief, appropriately casting the arguments originally presented in the Appeal Brief within the framework provided by the 2019 Guidance. *See* Reply Br. 2–6.

Our Review

Applying the Supreme Court's *Alice* framework, as further instructed by the 2019 Guidance, we are persuaded by Appellant's argument that its claims do not, in fact, recite an abstract idea or any other judicial exception (Guidance Step 2A, Prong 1).[6] Therefore, Appellant's claims are patent-eligible.

Guidance Step 2A, Prong 1

Examiner's rejection does not sufficiently articulate the abstract idea to which Appellant's claims are purportedly directed. In both the Final Action and the Answer, Examiner concludes that claim 1 is ineligible because it recites a "protocol or an algorithm for encrypting a payment information, decrypting the payment information and re-encrypting the payment information." Ans. 3; *see also* Final 3. Examiner does not attempt to articulate how this "algorithm" could be considered a mathematical concept, method of organizing human activity, or a mental process. Thus, Examiner's Answer neglects to consider the 2019 Guidance, which makes clear that "[c]laims that do not recite matter that falls within these enumerated groupings of abstract ideas should *not* be treated as reciting abstract ideas."[7] 2019 Guidance at 53 (emphasis added).

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[6] It is undisputed that Appellant's claims are directed to one of the statutory classes of patentable subject matter recited in 35 U.S.C. § 101. Thus, we begin our analysis at Step 2A, prong 1 of the 2019 Guidance.

[7] The 2019 Guidance provides for an exception in the "rare circumstance in which a USPTO employee believes a claim limitation that does not fall within the enumerated groupings of abstract ideas should nonetheless be treated as reciting an abstract idea." 2019 Guidance at 53. Such a rare circumstance is not presented here.

Applying the 2019 Guidance, we see no abstract idea recited in Appellant's claims. Claim 1 recites a method for processing a remote financial transaction involving a server computer that receives encrypted payment information comprising both user authentication data and device-specific security values. This information is decrypted, authenticated, updated to include an authentication response value obtained from an authentication computer, and then re-encrypted with a different encryption key before being sent to a transaction processor to initiate a payment transaction. It is not clear how these steps, taken as a whole or in part, recite an abstract idea within the groupings articulated in the 2019 Guidance.[8] Accordingly, we reverse Examiner's rejection of claim 1 without proceeding to the second prong of Guidance Step 2A or to *Alice* step 2 to determine

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[8] The dissent concludes that the various processes in claim 1 each "represent no more than the manipulation and transformation of symbolically-represented information" and are, therefore, abstract mental processes. In our view, that approach does not sufficiently consider the steps of the claim as an "ordered combination." *See Bascom Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1352 (Fed. Cir. 2016). In particular, claim 1 recites additional limitations (e.g., the requirement that both "device-specific security values" and "user authentication data" be included in the payment request, as opposed to some other message, and that the same request be updated with the "authentication response value" before being passed to the transaction processor) that improve operation of the transaction system by avoiding the need for multiple messages and additional encryption to achieve a comparable degree of security. Thus, even if the individual steps recite a mental process or processes, the claim when considered as a whole is not directed a judicial exception and is, therefore, patent-eligible. *See* Guidance Update at 13 (explaining that "it is important . . . to analyze the claim as a whole when determining whether the claim provides an improvement to the functioning of computers or an improvement to other technology or technical field").

whether the claims also provide an inventive concept (Guidance Step 2B).
See 2019 Guidance at 56.

Examiner's rejection of claim 14 is premised on the same rationale as the rejection of claim 1. *See* Final 5–6. Therefore, we reverse the rejection of claim 14 for the same reason.

II.   *Indefiniteness*

Claim 1

According to Examiner, claim 1 is indefinite because "[i]t is unclear whether Applicant is claiming a server computer or a combination of a server computer, communication device and authentication computer. Both the communication device and the authentication computer are outside the claimed server." Final 6.

We agree with Appellant that "there is no ambiguity as to what is claimed." Appeal Br. 15. As Appellant points out, claim 1 is not directed to a server computer or a combination of a server computer with other devices, rather claim 1 clearly recites a "method of processing a remote transaction." *See id.* Moreover, claim 1 makes clear that the each of the steps are performed "by the server computer." Because claim 1 is "cast in clear" terms and its meaning is not "unclear," it is not indefinite. *In re Packard*, 751 F.3d 1307, 1313–14 (Fed. Cir. 2014); *see also Ex parte McAward*, Appeal 2015-006416, 2017 WL 3669566, at *5 (PTAB Aug. 25, 2017) (precedential) (adopting the approach for assessing indefiniteness approved by the Federal Circuit in *Packard*). Accordingly, we reverse Examiner's rejection of claim 1 under 35 U.S.C. § 112(b).

Claim 14

Examiner determines that claim 14 is "hybrid claim" because it "is directed to a machine or server computer" that "also recites method steps- e.g. '. . . wherein the security information includes user authentication data input into the communication device . . .'." Final 6–7. According to Examiner, such a claim is indefinite because "it does not sufficiently provide competitors with an accurate determination of the 'metes and bounds' of the protection involved." *Id.* at 7 (citing *IPXL Holdings LLC v. Amazon.com Inc.,* 430 F.3d 1377 (Fed. Cir. 2005) and *In re Katz Interactive Call Processing Patent Litigation¸* 639 F.3d 1303 (Fed. Cir. 2011).

We agree with Appellant that this rejection should be reversed. While it is true "a single claim covering both an apparatus and a method of use of that apparatus" has been held indefinite, our reviewing court has repeatedly drawn a distinction between such claims and claims that "merely use permissible functional language to describe capabilities of the claimed system" and are, therefore, not indefinite. *MasterMine Software, Inc. v. Microsoft Corp.*, 874 F.3d 1307, 1313–1316 (collecting and analyzing cases applying *IPXL Holdings*). Claim 14 falls into this second category. It recites a "server computer" comprising a "processor" and "code, executable by the processor, to cause the server" to perform a series of functions. It is therefore "clear that infringement occurs when one makes, uses, offers to sell, or sells" the claimed computer. *Id.* at 1316. For this reason, we reverse the indefiniteness rejection of claim 14.

III. Obviousness

Examiner finds that Lee teaches a "mobile payment apparatus," i.e., a "server computer" as recited in claims 1 and 14, except that "Lee does not

explicitly teach" the following limitations:

> decrypting, by the server computer, the encrypted
> payment information using a second encryption key
> re-encrypting, by the server computer, the decrypted
> payment information using a third encryption key
> sending, by the server computer, a payment response
> including the re-encrypted payment information to a transaction
> processor associated with the communication device, wherein
> the transaction processor decrypts the re-encrypted payment
> information using a fourth encryption key and initiates a
> payment transaction using the decrypted payment information

See Final 8–10. According to Examiner, these limitations are taught by

Spies, or alternatively Faith, and it would have been obvious to modify Lee

to incorporate these elements "in order to further enhance security of the

transaction." *Id.* at 12.

Appellant argues that "[o]bviousness has not been established,

because the cited art fails to teach or suggest" step A of claim 1, i.e.,

"receiving, by the server computer, a payment request including encrypted

payment information . . . comprising user authentication data . . . and device-

specific security values associated with the communication device." Appeal

Br. 16–19. In addition, Appellant argues that the cited prior art fails to teach

the "obtaining," "updating," and "re-encrypting" steps, i.e., steps C–E of

claim 1. *Id.* at 19–21. According to Appellant, claim 14 recites similar

limitations and, therefore, the obviousness rejection should be reversed for

both independent claims. *Id.*

Upon considering the record as a whole, we are persuaded by

Appellant's arguments and determine that the preponderance of the evidence

of record does not support Examiner's conclusion of obviousness. Examiner

bears the burden to establish a prima facie case of obviousness. *In re*

Oetiker, 977 F.2d 1443, 1445 (Fed. Cir. 1992). As the MPEP instructs, the "key" to meeting this burden "is the *clear articulation* of the reason(s) why the claimed invention would have been obvious." MPEP § 2142 (emphasis added). Here, Examiner has failed to meet this burden in more than one respect.

First, we agree with Appellant that Examiner has not demonstrated that the cited prior art teaches step A of claim 1. While Lee teaches its mobile payment apparatus receives payment request information (*see, e.g.,* Lee Fig. 4A (S410)), it does not teach that the request includes "encrypted payment information," as recited in Appellant's claim. Moreover, Examiner has not shown that Lee's payment request information includes both "user authentication data" *and* "device-specific security values," as required by claim 1. In particular, Appellant argues that "Examiner fails to provide any indication of where the 'device-specific security values' . . . can be found in Lee." Appeal Br. 18. Examiner's Answer does not respond to this argument. Instead, Examiner reiterates the text of the rejection citing Lee's teaching that the payment request includes "payment method information and one-time password (OTP) information." Ans. 4. But that response, like the rejection itself, fails to articulate how such information constitutes the two distinct types of authenticating data (i.e., "user authentication data" and "device-specific security values") recited in the claim.

In addition, Examiner has not demonstrated that the cited prior art teaches step C of claim 1. Like each of the other steps of claim 1, step C recites that it is performed "by the server computer." Examiner's rejection is premised on a finding that Lee's "mobile payment apparatus" corresponds to the server computer in Appellant's claims. *See* Final 8 (identifying the

"mobile payment apparatus" as a server computer that receives a payment request as recited in step A). But for step C, Examiner relies on passages from Lee describing functionality performed locally at "terminal 110." Ans. 5. Examiner has not explained how Lee's teaching that this functionality is performed at the user's terminal supports that it would have been obvious to one of ordinary skill in the art to have step C be performed "by the server computer" as recited in claim 1. Nor does the Examiner make findings concerning the other references in the cited combination to address the deficiencies described above. For these reasons, Examiner has not met its burden for claim 1 and dependent claims 2–7 and 9–13.

The other independent claim, claim 14, is directed to a "server computer" and requires that it be capable of the functions recited in step A and step C of claim 1. Examiner relies on the same findings concerning the cited prior art and claim 1 to support the rejection of claim 14. *See* Final 8–12. As explained above, those findings do not establish a prima facie case of obviousness. Accordingly, we reverse the rejection of claim 14 and dependent claims 15–17 and 19.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1, 14	101	Eligibility		1, 14
1, 14	112(b)	Indefiniteness		1, 14
1–7, 9–17, 19	103	Lee, Spies, Faith		1–7, 9–17, 19
Overall Outcome				1–7, 9–17, 19

REVERSED

UNITED STATES PATENT AND TRADEMARK OFFICE
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BEFORE THE PATENT TRIAL AND APPEAL BOARD
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Ex parte OLEG MAKHOTIN and KIUSHAN PIRZADEH
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Appeal 2019-004215
Application 14/493,247
Technology Center 3600
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Before ULRIKE W. JENKS, JOHN G. NEW, and
MICHAEL A. VALEK, *Administrative Patent Judges*.

NEW, *Administrative Patent Judge*, dissenting-in-part.

I write separately to dissent from the majority's decision to reverse the Examiner's rejection of claims 1 and 14 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. To my mind, the claims recite no more than the type of abstract idea that our reviewing court has firmly and repeatedly held to be patent ineligible, as being an exception to the categories of patentable subject matter under § 101.

Claim 1 recites a series of steps that can be performed upon a generic, i.e., not purpose-built, computer. *See, e.g.*, Spec ¶ 52. Those steps comprise: (1) receiving, by a server computer, a payment request including encrypted payment information; (2) decrypting the encrypted payment information; (3) obtaining an authentication response value for the remote transaction from an authentication computer, by which the authentication computer validates the security information; (4) updating the decrypted

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payment information to include the authentication response value; (5) re-encrypting the decrypted payment information; and (6) sending, by the server computer, a payment response including the re-encrypted payment information to a transaction processor. I find that each of these steps thus represents an abstract manipulation of data by a generic computer such that the sum of the claim steps amounts to no more than an abstract idea.

The Supreme Court has held that "[p]henomena of nature, though just discovered, mental processes, and abstract intellectual concepts are not patentable, as they are the basic tools of scientific and technological work." *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972). In applying this principle, the Federal Circuit has held that processes performed on a generic computer that could also be performed in the human mind, or with the aid of a pencil and paper, are not patentable because "[s]uch a method that can be performed by human thought alone is merely an abstract idea and is not patent-eligible under § 101." *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1373 (Fed. Cir. 2011).

In step (2) of claim 1 of the appeal presently before us, the computer "decrypt[s] the encrypted payment information." In step (3) the computer authenticates and validates the security information. In step (4) the computer updates the decrypted payment information to include the authentication response value, and in step (5) the computer re-encrypts the decrypted payment information. Steps (1), (6), and to a certain extent (3) involve the transmission or receipt of electronically represented (i.e., abstracted) information. I find that each of these processes recited in steps (2)–(5): decryption, authentication, updating and validation, and re-encryption, represent no more than the manipulation and transformation of

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symbolically-represented information, and consequently represent the sort of abstract process that could be performed either mentally, or with the aid of a pencil and paper, and therefore represent the sort of abstract idea that constitutes a judicially-created exception to § 101.

Our reviewing court, in *Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016), held that "[i]nformation as such is an intangible." 830 F.3d at 1353 (citing *Microsoft Corp. v. AT & T Corp.*, 550 U.S. 437, 451 n.12 (2007); *Bayer AG v. Housey Pharm., Inc.*, 340 F.3d 1367, 1372 (Fed. Cir. 2003)). Similarly, the court held that "collecting information, including when limited to particular content (which does not change its character as information), as within the realm of abstract ideas." *Id.* at 1353–54 (citing, e.g., *TLI Commc'ns LLC Patent Litig.*, 823 F.3d 607, 613 (Fed. Cir. 2016); *Digitech Image Techs., LLC v. Elecs. for Imaging, Inc.*, 758 F.3d 1344, 1351 (Fed. Cir. 2014); *SmartGene, Inc. v. Advanced Biological Labs., SA*, 555 F.App'x 950, 955 (Fed. Cir. 2014); *Bancorp Servs., L.L.C. v. Sun Life Assurance Co. of Canada (U.S.)*, 687 F.3d 1266, 1278 (Fed. Cir. 2012); *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1372 (Fed. Cir. 2011); *SiRF Tech., Inc. v. Int'l Trade Comm'n*, 601 F.3d 1319, 1333 (Fed. Cir. 2010)). The Federal Circuit has also recognized that merely presenting the results of abstract processes of collecting and analyzing information, without more (such as identifying a particular tool for presentation), is abstract as an ancillary part of such collection and analysis. *Id.* (citing, e.g., *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat'l Ass'n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014); *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014)).

Here, as in *Electric Power Grp.*, the claims are directed to a combination of these abstract-idea processes. 830 F.3d at 1354. Specifically, they are directed to a process of gathering, processing, and analyzing information of a specified content, then sending the results to an end user, and not to any inventive technology for performing those functions. *Id.* The claims are therefore directed to an abstract idea.

I distinguish the claims of the present appeal from those in *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016) and *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014) because, unlike those and related cases, the claimed computer-based method does not purport to improve the functionality of the computer itself, but is rather directed to a method of processing information. *See Enfish*, 822 F.3d at 1335–36 (claimed method directed to how computers could carry out one of their basic functions of storage and retrieval of data); *DDR*, 773 F.3d at 1257 (finding inventive concept in modification of conventional mechanics behind website display to produce dual-source integrated hybrid display).

I acknowledge that the Examiner, although concluding that the claims are directed to an abstract idea, has not recited the term "mental process" in the Final Rejection of the claims. Nevertheless, the principal remains, to my way of thinking, the same: the claims are directed to a method of receiving, processing, and transmitting abstracted information.

Nor can I discern that the claims have any additional limitations that "transform the nature of the claim" into a patent-eligible application. *Mayo Collaborative Servc's v. Prometheus Labs., Inc.*, 566 U.S. 66, 77 (2012).

Therefore, because I agree with the Examiner's conclusion that the claims on appeal do no more than recite a judicially-created exception to

§ 101, *viz.*, an abstract idea, I respectfully dissent from the majority's

conclusion of law with respect to this issue.