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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte KENNETH J. OUIMET, TIMOTHY L. OUIMET,
ERICH B. WILSON, ANTHONY FRESINA, and ROBERT J. DUNST JR.

Appeal 2019-004730
Application 13/282,322
Technology Center 3600

Before JOSEPH A. FISCHETTI, NINAL L. MEDLOCK, and
KENNETH G. SCHOPFER, *Administrative Patent Judges*.

MEDLOCK, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant¹ appeals under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1–9, 11–18, and 20–31. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ We use the term “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Our decision references Appellant's Appeal Brief (“Appeal Br.,” filed December 26, 2018) and Reply Brief (“Reply Br.,” filed May 28, 2019), and the Examiner's Answer (“Ans.,” mailed March 26, 2019), and Final Office Action (“Final Act.,” mailed May 24, 2018). Appellant identifies MYWORLD, INC. as the real party in interest (Appeal Br. 1).

CLAIMED INVENTION

The claimed invention “relates in general to consumer purchasing and, more particularly, to a commerce system and method of controlling the commerce system using a share grabber to leverage a shopping list” (Spec. ¶ 2).

Claims 1, 7, 14, 20, and 26 are the independent claims on appeal. Claim 1, reproduced below with bracketed notations added, is illustrative of the claimed subject matter:

1. A method of controlling consumer transactions over an electronic network including a first computing system and a second computing system, comprising:

[(A)] collecting product information associated with the products on the first computing system;

[(B)] storing the product information in a database on the first computing system;

[(C)] providing a website for a consumer to create a shopping list using the second computing system with weighted preferences for product attributes, wherein, automatically and in response to an addition of a first item onto the shopping list by the consumer, optimizing the shopping list by,

(a) determining a first consumer value of a first product for purchase at a first retailer on the first computing system based on alignment of the weighted preferences and product attributes of the first product, wherein the first consumer value is a summation of weight assigned to each attribute by the consumer multiplied by a preference level assigned to each attribute by the consumer,

(b) determining a second consumer value of a second product for purchase at a second retailer on the first computing system based on alignment of the weighted preferences and product attributes of the first product, wherein the second consumer value is a summation of weight assigned to each attribute by the consumer multiplied by a preference level assigned to each attribute

by the consumer, and wherein the first product and second product are both suitable to satisfy the first item on the shopping list,

(c) generating a plurality of individualized discounts from the plurality of retailers for the products on the shopping list on the first computing system, wherein the individualized discounts are customized for the consumer based on the weighted preferences and product information,

(d) determining a first net value of the first product purchased at the first retailer with a first individualized discount on the first computing system, wherein the first net value is the first consumer value normalized by a price of the first product with the first individualized discount applied,

(e) determining a second net value of the second product purchased at the second retailer with a second individualized discount on the first computing system, wherein the second net value is the second consumer value normalized by the price of the second product with the second individualized discount applied, and wherein the second net value is greater than the first net value,

(f) increasing the first individualized discount on the first computing system after determining the first net value and second net value,

(g) recalculating the first net value and second net value on the first computing system after increasing the first individualized discount, wherein the first net value is greater than the second net value, and

(h) adding the first product for purchase at the first retailer with the first individualized discount to an optimized shopping list for the consumer based on the first net value being higher than the second net value;

[(D)] transmitting the optimized shopping list from the first computing system to the second computing system using an electronic network to display the optimized shopping list to the consumer by a user interface of the second computing system; and

[(E)] receiving a percentage of an incremental profit for the purchase of the first product at the first retailer as a fee, wherein the incremental profit is a difference between a maximum discount authorized by the first retailer and the first individualized discount redeemed by the consumer.

REJECTION

Claims 1–9, 11–18, and 20–31 are rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.²

ANALYSIS

Under 35 U.S.C. § 101, an invention is patent eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. The Supreme Court, however, has long interpreted § 101 to include an implicit exception: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014).

The Supreme Court, in *Alice*, reiterated the two-step framework previously set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012), “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice Corp.*, 573 U.S. at 217. The first step in that analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts.” *Id.* If the claims are not directed to a patent-ineligible concept, e.g., an abstract idea, the inquiry ends. Otherwise, the inquiry proceeds to the second step where the elements

² The Examiner inadvertently omitted claim 18 in identifying the pending claims on appeal (*see* Final Act. 1, 2).

of the claims are considered “individually and ‘as an ordered combination’” to determine whether there are additional elements that “‘transform the nature of the claim’ into a patent-eligible application.” *Id.* (quoting *Mayo*, 566 U.S. at 79, 78). This 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.’” *Id.* at 217–18 (alteration in original).

In rejecting the pending claims under 35 U.S.C. § 101, the Examiner determined that the claims are directed to “the abstract idea of a sales and marketing behavior,” *i.e.*, to a concept similar to other concepts that courts have held abstract (Final Act. 3). The Examiner also determined that the claims do not include additional elements sufficient to amount to significantly more than the abstract idea itself (*id.* at 4).

After the Final Office Action was mailed and Appellant’s Appeal Brief filed, the U.S. Patent and Trademark Office (the “USPTO”) published revised guidance on January 7, 2019 for use by USPTO personnel in evaluating subject matter eligibility under 35 U.S.C. § 101. 2019 REVISED PATENT SUBJECT MATTER ELIGIBILITY GUIDANCE, 84 Fed. Reg. 50, 57 (Jan. 7, 2019) (the “2019 Revised Guidance”). That guidance revised the USPTO’s examination procedure with respect to the first step of the *Mayo/Alice* framework by (1) “[p]roviding groupings of subject matter that [are] considered an abstract idea”; and (2) clarifying that a claim is not “directed to” a judicial exception if the judicial exception is integrated into a practical application of that exception. *Id.* at 50. The 2019 Revised

Guidance, by its terms, applies to all applications, and to all patents resulting from applications, filed before, on, or after January 7, 2019. *Id.*^{3,4}

Independent Claim 1 and Dependent Claims 2–6

Step One of the Mayo/Alice Framework (2019 Revised Guidance, Step 2A)

The first step in the *Mayo/Alice* framework, as mentioned above, is to determine whether the claims at issue are “directed to” a patent-ineligible concept, e.g., an abstract idea. *Alice Corp.*, 573 U.S. at 217. This first step, as set forth in the 2019 Revised Guidance (i.e., Step 2A), is a two-prong test; in Step 2A, Prong One, we look to whether the claim recites a judicial exception, e.g., one of the following three groupings of abstract ideas: (1) mathematical concepts; (2) certain methods of organizing human activity, e.g., fundamental economic principles or practices, commercial or legal interactions; and (3) mental processes. 2019 Revised Guidance, 84 Fed. Reg. at 54. If so, we next consider whether the claim includes additional elements, beyond the judicial exception, that “integrate the

³ The 2019 Revised Guidance supersedes MANUAL OF PATENT EXAMINING PROCEDURE (“MPEP”) § 2106.04(II) and also supersedes all versions of the USPTO’s “Eligibility Quick Reference Sheet Identifying Abstract Ideas.” *See* 2019 Revised Guidance, 84 Fed. Reg. at 51 (“Eligibility-related guidance issued prior to the Ninth Edition, R-08.2017, of the MPEP (published Jan. 2018) should not be relied upon.”). Accordingly, Appellant’s arguments challenging the sufficiency of the Examiner’s rejection will not be addressed to the extent those arguments are based on the Examiner’s alleged failure to comply with now superseded USPTO guidance.

⁴ The USPTO issued an update on October 17, 2019 (the “October 2019 Update: Subject Matter Eligibility,” available at https://www.uspto.gov/sites/default/files/documents/peg_oct_2019_update.pdf) clarifying the 2019 Revised Guidance in response to comments received from the public.

[judicial] exception into a practical application,” i.e., that 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 (Step 2A, Prong Two). *Id.* at 54–55. Only if the claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application do we conclude that the claim is “directed to” the judicial exception, e.g., an abstract idea. *Id.*

We are not persuaded here, as an initial matter, that the Examiner overgeneralized the claims to identify an abstract idea, or that the Examiner otherwise failed to consider claim 1 as a whole (Appeal Br. 13–14). Instead, the Examiner’s characterization of the claim is, in our view, fully consistent with the Specification, as described below, including the claim language.

Appellant charges that the Examiner “does not consider or address” various claim limitations (*id.*); but, there is no requirement that an examiner’s formulation of the abstract idea must copy the claim language. That the claim includes more words than the phrase the Examiner used to articulate the abstract idea, and that the Examiner, thus, articulates the abstract idea at a higher level of abstraction than would Appellant is, accordingly, an insufficient basis to persuasively argue that the claim language has been mischaracterized or that the Examiner has failed to consider the claim as a whole. *Cf. 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. As the Board has done, the claimed abstract idea could be described as generating menus on a computer, or generating a second menu from a first menu and sending the second menu to another

location. It could be described in other ways, including, as indicated in the specification, taking orders from restaurant customers on a computer.”).

We also are not persuaded by Appellant’s argument that the Examiner erred in determining that claim 1 is directed to an abstract idea (Appeal Br. 15–21). The Federal Circuit has explained that “the ‘directed to’ inquiry applies a stage-one filter to claims, considered in light of the specification, based on whether ‘their character as a whole is directed to excluded subject matter.’” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016) (quoting *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015)). It asks whether the focus of the claims is on a specific improvement in relevant technology or on a process that itself qualifies as an “abstract idea” for which computers are invoked merely as a tool. *See id.* at 1335–36. Here, it is clear from the Specification (including the claim language) that claim 1 focuses on an abstract idea, and not on any improvement to technology and/or a technical field.

The Specification is titled “COMMERCE SYSTEM AND METHOD OF CONTROLLING COMMERCE SYSTEM USING SHARE GRABBER TO LEVERAGE SHOPPING LIST,” and describes, in the Background section, that economic modeling is commonly used to estimate or predict the performance and outcome of real systems, and can be an effective tool both in helping retail store owners and managers (e.g., grocers) forecast and optimize business decisions, and in helping consumers, interested in quality, low prices, comparative product features, convenience, and receiving the most value for the money, achieve those goals (Spec. ¶¶ 3, 5–6). The Specification notes that although retailers have ready access to historical transaction sales data, the lack of ready access to comprehensive, reliable,

and objective product information essential to providing effective comparative shopping services restricts consumers' ability to find the lowest prices, compare product features, and make the best purchasing decisions (*id.* ¶ 6).

The present invention is ostensibly intended to address this issue by providing a consumer model or comparative shopping service in which retailer product information is combined with a consumer's profile and weighted product preferences to generate an optimized shopping list (*id.* ¶ 61). More particularly, the Specification describes that the optimized shopping list is generated by considering each line item of the consumer's shopping list, including the consumer's preference for particular product attributes, and determining, based on retailer product information, which products should be purchased from which retailers on which day to maximize the value to the consumer (*id.* ¶ 62).

Consistent with this disclosure, claim 1 recites a method for controlling consumer transactions over an electronic network, including a first computing system and a second computing system, comprising:

- (1) "collecting product information associated with the products on the first computing system" (step (A));
- (2) "storing the product information in a database on the first computing system" (step (B));
- (3) providing a website for a customer to create a shopping list with weighed preferences for product attributes using the second computing system, and optimizing the shopping list in response to the addition of a first item to the list, i.e., "providing a website for a consumer to create a shopping list using the second computing system with weighted preferences for product attributes, wherein, automatically and in response to an addition of a first item onto the shopping

list by the consumer, optimizing the shopping list” (step (C));
(4) transmitting the optimized shopping list from the first computing system to the second computing system for display to the consumer, i.e.,
“transmitting the optimized shopping list from the first computing system to the second computing system using an electronic network to display the optimized shopping list to the consumer by a user interface of the second computing system” (step (D)); and (5) receiving, as a fee, a percentage of the first retailer’s incremental profit based on the purchase of the first product, i.e., “receiving a percentage of an incremental profit for the purchase of the first product at the first retailer as a fee, wherein the incremental profit is a difference between a maximum discount authorized by the first retailer and the first individualized discount redeemed by the consumer” (step (E)).

Claim 1 further recites that the consumer shopping list is optimized by: (1) determining a first consumer value of a first product for purchase at a first retailer, where the consumer value is a summation of the weight assigned to each product attribute multiplied by its preference level,⁵ i.e.,

⁵ The Specification describes that the consumer value can be determined by

$$CV = CV_b \prod_a (M_a)$$

where CV_b is a baseline product value of the product category, and M_a is the product attribute value to the consumer for product attribute “a” expressed as $(1 + x\%)$, where x is a percentage increase in value of the product to the consumer having the attribute “a” with respect to products having no product attribute “a.”

(See Spec. ¶ 75).

determining a first consumer value of a first product for purchase at a first retailer on the first computing system based on alignment of the weighted preferences and product attributes of the first product, wherein the first consumer value is a summation of weight assigned to each attribute by the consumer multiplied by a preference level assigned to each attribute by the consumer (step (a)); (2) determining a second consumer value of a second product for purchase at a second retailer, i.e.,

determining a second consumer value of a second product for purchase at a second retailer on the first computing system based on alignment of the weighted preferences and product attributes of the first product, wherein the second consumer value is a summation of weight assigned to each attribute by the consumer multiplied by a preference level assigned to each attribute by the consumer, and wherein the first product and second product are both suitable to satisfy the first item on the shopping list (step (b)); (3) generating a plurality of individualized discounts for the products on the shopping list, customized for the consumer based on the weighted preferences and product information, i.e., “generating a plurality of individualized discounts from the plurality of retailers for the products on the shopping list on the first computing system, wherein the individualized discounts are customized for the consumer based on the weighted preferences and product information” (step (c)); (4) determining a first net value of the first product purchased at the first retailer where the first net value is the first consumer value normalized by a final price of the first product after the first individualized discount is applied,⁶ i.e.,

⁶ The net value is computed by $NV = CV/FP$ or alternatively by $NV = (CV-FP)/CV$, where CV is the consumer value and FP is the final price offered to the consumer, i.e., the regular price less any applicable discount (Spec. ¶¶ 76–78).

determining a first net value of the first product purchased at the first retailer with a first individualized discount on the first computing system, wherein the first net value is the first consumer value normalized by a price of the first product with the first individualized discount applied

(step (d)); (5) determining a second net value of the second product purchased at the second retailer where the second net value is the second consumer value normalized by a final price of the second product after the second individualized discount is applied and is greater than the first net value, i.e.,

determining a second net value of the second product purchased at the second retailer with a second individualized discount on the first computing system, wherein the second net value is the second consumer value normalized by the price of the second product with the second individualized discount applied, and wherein the second net value is greater than the first net value

(step (e)); and (6) increasing the first individualized discount, recalculating the first and second net values, and adding the first product to the optimized shopping list based on the first net value being higher than the second net value, i.e.,

increasing the first individualized discount on the first computing system after determining the first net value and second net value,

recalculating the first net value and second net value on the first computing system after increasing the first individualized discount, wherein the first net value is greater than the second net value, [and]

adding the first product for purchase at the first retailer with the first individualized discount to an optimized shopping list for the consumer based on the first net value being higher than the second net value

(steps (f), (g), and (h)). These limitations, when given their broadest reasonable interpretation, recite (1) collecting information (e.g., product information associated with products available for purchase, a consumer shopping list with weighed preferences for product attributes); (2) analyzing the information via mathematical calculations (e.g., optimizing the shopping list by, *inter alia*, determining a first net value of a first product purchased at a first retailer and a second net value of a second product purchased at a second retailer by normalizing the final price of the products after discounts are applied); and (3) displaying the results of the collection and analysis (e.g., displaying the optimized shopping list to the consumer). Simply put, claim 1 recites mathematical calculations and mathematical relationships, which are mathematical concepts and, therefore, an abstract idea. *See* 2019 Revised Guidance, 84 Fed. Reg. at 52. *See also SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1163 (Fed. Cir. 2018) (holding that claims to “a series of mathematical calculations based on selected information” are directed to an abstract idea).⁷

⁷ The Federal Circuit has held similar concepts to be abstract. Thus, for example, the Federal Circuit has held that abstract ideas include the concepts of collecting data, analyzing the data, and displaying the results of the collection and analysis, including when limited to particular content. *See, e.g., Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1340 (Fed. Cir. 2017) (identifying the abstract idea of collecting, displaying, and manipulating data); *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016) (characterizing collecting information, analyzing information by steps people go through in their minds, or by mathematical algorithms, and presenting the results of collecting and analyzing information, without more, as matters within the realm of abstract ideas); *see also SAP Am.*, 898 F.3d at 1168 (“As many cases make clear, even if a process of collecting and analyzing information is ‘limited to particular content’ or a particular ‘source,’ that limitation does not make the

Having concluded that claim 1 recites a judicial exception, i.e., an abstract idea (Step 2A, Prong One), we next consider whether the claim recites additional elements that integrate the judicial exception into a practical application (Step 2A, Prong Two).

The only additional elements recited in claim 1, beyond the abstract idea, are the “first computing system” and the “second computing system” — elements that the Examiner concluded are generic computer components (Final Act. 4); they also are described as such in the written disclosure (*see, e.g.*, Spec. ¶46). We find no indication in the Specification that the operations recited in claim 1 require any specialized computer hardware or other inventive computer components, i.e., a particular machine, invoke any allegedly inventive programming, or that the claimed invention is implemented using other than generic computer components to perform generic computer functions. *See DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014) (“[A]fter *Alice*, there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible.”).

We also find no indication in the Specification that the claimed invention effects a transformation or reduction of a particular article to a different state or thing. Nor do we find anything of record, short of attorney argument, that attributes an improvement in technology and/or a technical field to the claimed invention or that otherwise indicates that the claimed

collection and analysis other than abstract.”) (quoting *Elec. Power Grp.*, 830 F.3d at 1353, 1355 (citing cases)).

invention integrates the abstract idea into a “practical application,” as that phrase is used in the 2019 Revised Guidance.⁸

Appellant maintains here that claim 1 is not directed to an abstract idea, and is patent eligible, because the claim addresses a problem “specifically arising in the realm of computer networks and computer technology” (Appeal Br. 16–19). Appellant asserts that although consumers now shop using computer technology (e.g., to determine items needed, availability, pricing, and alternatives), the vast amount of information and resources available with computer search tools and electronic communication links can make the simplest of tasks quite complex (*id.* at 16). Appellant, thus, maintains that much computing time and resources can be wasted in pursuing a potential purchaser to complete a sale in an expeditious manner (e.g., a retailer or manufacturer may have to make repeated offers in order to hit the purchase decision threshold), which, according to Appellant, is “why the problem is specific to the realm of computer networks and computer technology” (*id.* at 17).

Further, paraphrasing the claim language, Appellant variously argues that claim 1 “provides a specific solution toward the purchasing decision” (*id.*), and that the claim, taken as a whole, “improves the functionality of the computing systems by utilizing retailer product information with consumer’s

⁸ The 2019 Revised Guidance references MPEP § 2106.05(a)–(c) and (e) in describing the considerations that are indicative that an additional element or combination of elements integrates the judicial exception, e.g., the abstract idea, into a practical application. 2019 Revised Guidance, 84 Fed. Reg. at 55. If the recited judicial exception is integrated into a practical application, as determined under one or more of these MPEP sections, the claim is not “directed to” the judicial exception.

profile and a list of products . . . with weighted attributes to generate an optimized shopping list . . . with an individualized discounted offer for each product . . . to maximize the value to the consumer (*id.* at 20). Appellant, thus, maintains that computer operations and network utilization are improved by “using less failed attempts to find the point of a positive purchasing decision point,” and that “[c]laim 1, taken as a whole, improves the functionality of the computing systems by optimizing the shopping list using a highly specific process that increases the likelihood of reaching a purchasing decision” (*id.* at 21; *see also id.* (further arguing that “[t]he optimization process, data structure, and communication protocol enhance[] the operation between the first computing system and second computing system by increasing the probability of completing a sale by finding the price point of positive purchasing decision, while reducing unnecessary searching and networking and communication utilization”)).

Although the claimed process may be network-centric in the sense that consumer transactions are conducted online, i.e., over an electronic network, pursuing a potential purchaser to complete a sale in an expeditious manner is not a problem arising in the realm of computer networks and computer technology. Pursuing potential purchasers is a business/marketing problem that existed before, and still exists outside of computer technology and computer networks. And the purported solution here of, at best, generic computer components performing generic computer functions, is not necessarily rooted in computer technology.

Importantly too, there is a fundamental difference between computer functionality improvements, on the one hand, and uses of existing computers as tools to perform a particular task, on the other — a distinction that the

Federal Circuit applied in *Enfish*, in rejecting a § 101 challenge at the first stage of the *Mayo/Alice* framework because the claims at issue focused on a specific type of data structure, i.e., a self-referential table, and not merely on asserted advances in uses to which existing computer capabilities could be put. *See Enfish*, 822 F.3d at 1335–36. Here, to the extent the claimed invention provides an improvement, that improvement does not concern an improvement to computer capabilities but instead relates to an alleged improvement in achieving a positive consumer purchasing decision — a process in which a computer is used as a tool in its ordinary capacity.

Considered in light of the Specification, the claimed invention clearly appears focused on achieving a commercial objective, e.g., increasing the likelihood that a consumer will make a purchasing decision by providing the consumer with an optimized shopping list that includes products of interest to the consumer offered at an attractive price (*see, e.g., id.* ¶ 42 (describing that an effective model or comparative shopping service “must assist the consumer in finding the optimal price and product attributes, e.g., brand, quality, quantity, size, features, ingredients, service, warranty, and convenience, that are important to the consumer and tip the purchasing decision toward selecting a particular product and retailer”), *id.* ¶ 43 (“[P]ersonal assistant engine 74 . . . prioritizes product attributes and optimizes product selection according to the consumer’s preferences. In addition, personal assistant engine 74 generates a discounted offer for a product to entice a positive purchasing decision by a specific consumer.”), *id.* ¶ 60 (“The task is to determine an optimal pricing threshold for product P associated with each individual consumer and then make that discounted offer available for the individual consumer in order to trigger a positive

purchasing decision)), and not on any claimed means for achieving that goal that improves technology.

We conclude, for the reasons outlined above, that claim 1 recites mathematical concepts, i.e., an abstract idea, and that the additional elements recited in the claim are no more than generic components used as tools to perform the recited abstract idea. As such, they do not integrate the abstract idea into a practical application. *See Alice Corp.*, 573 U.S. at 223–24 (“[W]holly generic computer implementation is not generally the sort of ‘additional featur[e]’ that provides any ‘practical assurance that the process is more than a drafting effort designed to monopolize the [abstract idea] itself.’” (quoting *Mayo*, 566 U.S. at 77)). Accordingly, we agree with the Examiner that claim 1 is directed to an abstract idea.

Step Two of the Mayo/Alice Framework (2019 Revised Guidance, Step 2B)

Having determined under step one of the *Mayo/Alice* framework that claim 1 is directed to an abstract idea, we next consider under Step 2B of the 2019 Revised Guidance, the second step of the *Mayo/Alice* framework, whether claim 1 includes additional elements or a combination of elements that provides an “inventive concept,” i.e., whether the additional elements amount to “significantly more” than the judicial exception itself.

2019 Revised Guidance, 84 Fed. Reg. at 56.

Appellant asserts that the inventive concept here involves
determining a first consumer value of a first product . . . ,
determining a second consumer value of a second product . . . ,
generating a plurality of individualized discounts . . . ,
determining a first net value of the first product . . . , determining
a second net value of the second product . . . , increasing the first
individualized discount . . . , recalculating the first net value and

second net value . . . , adding the first product for purchase at the first retailer with the first individualized discount to an optimized shopping list . . . , and transmitting the optimized shopping list from the first computing system to the second computing system using an electronic network to display the optimized shopping list to the consumer by a user interface of the second computing system (complete claim language recited above)

(Appeal Br. 21–22). And Appellant argues that the Examiner “has failed to provide support that the above limitations are well-understood, routine, and conventional in the fields of retailer offers and generic computer operation” (*id.* at 22).

Appellant’s argument is not persuasive at least because “the relevant inquiry is not whether the claimed invention as a whole is unconventional or non-routine.” *BSG Tech LLC v. BuySeasons, Inc.*, 899 F.3d 1281, 1290 (Fed. Cir. 2018). Instead, the question under step two of the *Mayo/Alice* framework (i.e., step 2B) is whether the claim includes additional elements, i.e., elements other than the abstract idea itself, that “‘transform the nature of the claim’ into a patent-eligible application.” *Alice Corp.*, 573 U.S. at 217 (quoting *Mayo*, 566 U.S. at 79, 78). *See also Mayo*, 566 U.S. at 72–73 (requiring that “a process that focuses upon the use of a natural law also contain *other* elements or a combination of elements, sometimes referred to as an ‘inventive concept,’ sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the natural law itself” (emphasis added)).

Here, the Examiner determined, and we agree, that the only claim elements beyond the abstract idea are the “first computing system” and the “second computing system,” i.e., generic computer components used to perform generic computer functions (Final Act. 4) — a determination amply

supported by, and fully consistent with the Specification (*see, e.g.*, Spec. ¶ 46).

Appellant cannot reasonably maintain, nor does Appellant, that there is insufficient factual support for the Examiner’s determination that the operation of these components is well-understood, routine, or conventional, where, as here, there is nothing in the Specification to indicate that the operations recited in claim 1 require any specialized hardware or inventive computer components or that the claimed invention is implemented using other than generic computer components to perform generic computer functions, e.g., receiving, processing, and displaying information. Indeed, the Federal Circuit, in accordance with *Alice*, has “repeatedly recognized the absence of a genuine dispute as to eligibility” where claims have been defended as involving an inventive concept based “merely on the idea of using existing computers or the Internet to carry out conventional processes, with no alteration of computer functionality.” *Berkheimer v. HP Inc.*, 890 F.3d 1369, 1373 (Fed. Cir. 2018) (Moore, J., concurring) (citations omitted); *see also BSG Tech*, 899 F.3d at 1291 (“BSG Tech does not argue that other, non-abstract features of the claimed inventions, alone or in combination, are not well-understood, routine and conventional database structures and activities. Accordingly, the district court did not err in determining that the asserted claims lack an inventive concept.”).

We are not persuaded, on the present record, that the Examiner erred in rejecting independent claim 1 under 35 U.S.C. § 101. Therefore, we sustain the Examiner’s rejection of claim 1, and dependent claims 2–6, which are not argued separately.

Independent Claims 7, 14, 20, and 26 and Dependent Claims 8, 9, 11–13, 15–18, 21–25, and 27–31

Appellant’s arguments with respect to independent claims 7, 14, 20, and 26 are substantially identical to Appellant’s arguments with respect to independent claim 1. We found those arguments unpersuasive with respect to claim 1, and we find them equally unpersuasive with respect to claims 7, 14, 20, and 26. Therefore, we sustain the Examiner’s rejection of independent claims 7, 14, 20 and 26 under 35 U.S.C. § 101. We also sustain the rejection of dependent claims 8, 9, 11–13, 15–18, 21–25, and 27–31, which are not argued separately.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–9, 11–18, 20–31	101	Eligibility	1–9, 11–18, 20–31	

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