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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte BRIGETTE WHITE, THEUNIS JOHANNES GERBER, and
JULIA GOSSET

Appeal 2019-006495
Application 15/154,177
Technology Center 3600

Before JEAN R. HOMERE, GREGG I. ANDERSON, and
MICHAEL M. BARRY, *Administrative Patent Judges*.

ANDERSON, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 1–25. Appeal Br. 2. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ We use the word Appellant to refer to “applicant” as defined in 37 C.F.R. § 1.42(a). Appellant identifies the real party in interest as MasterCard International Incorporated. Appeal Br. 2.

CLAIMED SUBJECT MATTER

The claims are directed to an Enhanced Payment Card Platform. Spec.,² Title. Prior payment card systems are described as operated by, for example, the assignee, “MasterCard International Incorporated.” *Id.* at 1:15–18. Figure 1 from the Specification, reproduced below, is illustrative.

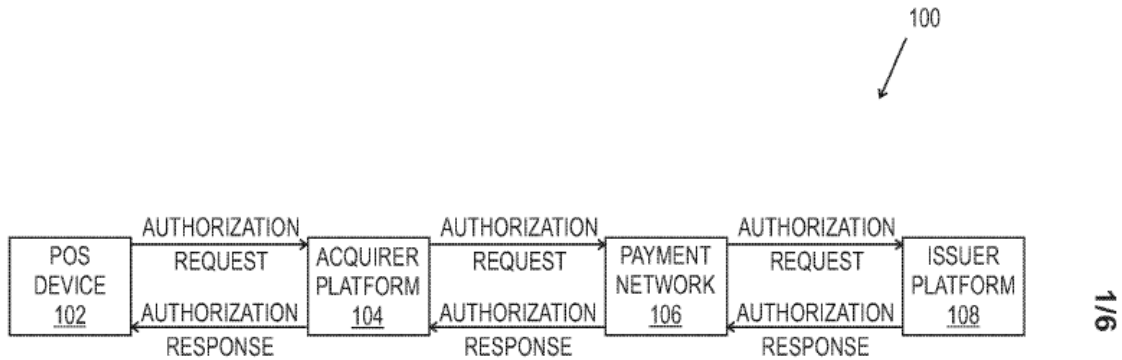


FIG. 1

Figure 1 “is a simplified block diagram of a conventional payment card system.” *Id.* at 5:1. The payment cards include “a debit card account, a credit card account, a prepaid card account, a loyalty card account, or the like.” *Id.* at 2:12–14.

The “enhanced” payment card platform” allows an “account holder to select benefits from a list provided by a benefits provider.” Spec., 5:22–24. Benefits may include “enhanced levels of customer service, to provide enhanced fraud monitoring and solutions, and to cover any amounts that

² We use “Spec.” to refer to the Specification filed May 13, 2016, “Final Act.” to refer to the Final Office Action dated October 18, 2018, “Appeal Br.” to refer to Appellant’s Brief filed March 15, 2019, “Ans.” to refer to the Examiner’s Answer filed July 3, 2019, and “Reply Br.” to refer to Appellant’s Reply Brief filed August 30, 2019.

must be paid (or paid back) to issuer FIs [financial institutions] for any fraudulent activity that may occur.” *Id.* at 22:9–11. For example, the issuer FI receives a recommended decision score, including factors relating to fraud risk, relative to whether to authorize purchase transaction. *Id.* at 24:28–31. The FI then makes a decision as to whether to authorize the transaction, and may overrule an initial decline decision as an enhanced benefit. *Id.* at 25:6–14.

If a decline decision is overruled, the transaction may turn out to be fraudulent, in which case the FI receives a fraud message. *Spec.* 26:17–20. A clearing and settlement system then transfers a monetary amount from a fraud expense pool to the FI to reimburse costs associated with the fraudulent purchase transaction. *Id.* at 26:20–24.

Claims 1 and 16 are representative (*see* Appeal Br. 20, 26) and are reproduced below, are illustrative of the claimed subject matter:

1. An enhanced payment card account method comprising:

receiving, by a fraud scoring platform from a payment network, purchase transaction information and an associated decline decision generated by an issuer financial institution (FI) computer for a purchase transaction involving an enhanced payment card account;

formulating, by the fraud scoring platform, a recommended decision score based on the purchase transaction information and purchase history data associated with the enhanced payment card account;

determining, by the fraud scoring platform, that the recommended decision score is below a risk threshold;

transmitting, by the fraud scoring platform to the payment network based on the recommended decision score, a

purchase transaction authorization message overruling the decline decision received from the issuer FI computer;

receiving, by the fraud scoring platform from one of the payment network or the issuer FI computer, a fraud message indicating that the authorized purchase transaction involving the enhanced payment card account is fraudulent; and

transmitting, by the fraud scoring platform via the payment network and the issuer financial institution to a clearing and settlement system, instructions to transfer a monetary amount from a fraud expense pool to the issuer FI computer to reimburse costs associated with the fraudulent purchase transaction identified by the fraud message, wherein the fraud expense pool is funded by a portion of card products and services fees charged to issuer FIs that issue enhanced payment card accounts.

16. An enhanced payment card account method comprising:

receiving, by a fraud scoring platform, purchase transaction information and an associated decline decision from an issuer financial institution (FI) computer for a purchase transaction involving an enhanced payment card account;

formulating, by the fraud scoring platform, a recommended decision score based on the purchase transaction information and purchase history data associated with the enhanced payment card account;

transmitting, by the fraud scoring platform, at least one of the recommended decision score and raw data associated with the enhanced payment card account to the issuer FI computer;

receiving, by the fraud scoring platform from the issuer FI computer, a purchase transaction authorization message associated with the purchase transaction involving the enhanced payment card account overruling the decline decision;

receiving, by the fraud scoring platform from at least one of the issuer FI computer and the payment network, a fraud message indicating that the purchase transaction involving the enhanced payment card account is fraudulent; and

transmitting, by the fraud scoring platform via the issuer financial institution to a clearing and settlement system, instructions to transferring a monetary amount from a fraud expense pool to the issuer FI computer to reimburse costs associated with the fraudulent purchase transaction identified by the fraud message, wherein the fraud expense pool is funded by a portion of card products and services fees charged to issuer FIs that issue enhanced payment card accounts.

REFERENCES

The Examiner relies upon the following prior art:

Name	Reference	Date
Bodington	US 2010/0211445 A1	Aug. 19, 2010
Clarke	US 2015/0095215 A1	Apr. 2, 2015
Nighan	US 2002/0046065 A1	Apr. 18, 2002
Langus	US 2014/0244496 A1	Aug. 28, 2014
Hillmer	US 2003/0069820 A1	Apr. 10, 2003

REJECTIONS

1. Claims 1–25 are rejected under 35 U.S.C. § 101. Final Act. 15–42.
2. Claims 1 and 3–11 are rejected under 35 U.S.C. 103 over Bodington, Clarke, and Nighan. *Id.* at 43–51.
3. Claim 2 is rejected under 35 U.S.C. 103 over Bodington, Clarke, Nighan, and Langus. *Id.* at 52–53.
4. Claims 12 and 15 are rejected under 35 U.S.C. 103 over Bodington, Clarke, and Nighan. *Id.* at 53–58.

5. Claim 13 is rejected under 35 U.S.C. 103 over Bodington, Clarke, Nighan, and Langus. *Id.* at 58–59.
6. Claim 14 is rejected under 35 U.S.C. 103 over Bodington, Clarke, Nighan, and Hillmer. *Id.* at 59–61.
7. Claims 16–20 and 22 are rejected under 35 U.S.C. 103 over Bodington, Clarke, and Nighan. *Id.* at 61–67.
8. Claim 21 is rejected under 35 U.S.C. 103 over Bodington, Clarke, Nighan, and Hillmer. *Id.* at 67–69.
9. Claims 23 and 25 are rejected under 35 U.S.C. 103 over Bodington, Clarke, and Nighan. *Id.* at 70–75.
10. Claim 24 is rejected under 35 U.S.C. 103 over Bodington, Clarke, Nighan, and Hillmer. *Id.* at 75–76.

OPINION

I. SECTION 101 REJECTION

The Examiner rejects all of the pending claims under 35 U.S.C. § 101 as patent ineligible because they are directed to at least one judicial exception without additional elements that amount to significantly more. Final Act. 15–42; Ans. 3–10. Appellant argues that the claims are not directed to an abstract idea because they: do not fall into any of the groupings set forth in the 2019 Guidance and are therefore not abstract ideas; integrate the exception into a practical application; the claims recite significantly more than the abstract idea, and the Examiner’s rejection should be reversed. Appeal Br. 19–25 (claims 1–15), 26–32 (claims 16–25); Reply Br. 2–6. For the reasons explained below, we are not persuaded of Examiner error in the § 101 rejection, and we, therefore, sustain that rejection.

A. PRINCIPLES OF LAW

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 U.S. Supreme Court, however, has 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 Court, in *Alice*, reiterated the two-part framework previously set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66, 75–77 (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*, 573 U.S. at 217. The first part in the analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts.” *Id.* For example, abstract ideas include, but are not limited to, fundamental economic practices, methods of organizing human activities, an idea of itself, and mathematical formulas or relationships. *Id.* at 218–20. The “directed to” inquiry asks not whether “the claims *involve* a patent-ineligible concept,” but instead whether, “considered in light of the specification, . . . ‘their character as a whole is directed to excluded subject matter.’” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016). In that regard, we determine whether the claims “focus on a specific means or method that improves the relevant technology” or are “directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery.” *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314 (Fed. Cir. 2016).

If, in the first part of the *Alice/Mayo* analysis, we conclude that the claims are not directed to a patent-ineligible concept, we consider them

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patent eligible under § 101 and our inquiry ends. *Rapid Litig. Mgmt. Ltd. v. CellzDirect, Inc.*, 827 F.3d 1042, 1047 (Fed. Cir. 2016).

If the claims are directed to a patent-ineligible concept, the second part in the *Alice/Mayo* analysis is to consider the elements of the claims “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.” *Alice*, 573 U.S. at 217 (quoting *Mayo*, 566 U.S. at 79, 78). In other words, the second part is to “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) (internal citation marks omitted) (quoting *Mayo*, 566 U.S. at 72–73). The prohibition against patenting an abstract idea “‘cannot be circumvented by attempting to limit the use of the formula to a particular technological environment’ or adding ‘insignificant post solution activity.’” *Bilski v. Kappos*, 561 U.S. 593, 610–11 (2010).

The U.S. Patent and Trademark Office (the “Office”) has published revised guidance on the application of 35 U.S.C. § 101. 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50–57 (Jan. 7, 2019) (“2019 Guidance”). Under the 2019 Guidance, the Office first looks to whether the claim recites: (1) any judicial exceptions, including certain groupings of abstract ideas (*i.e.*, mathematical concepts, certain methods of organizing human activity such as commercial or legal interactions, including advertising and marketing, or mental processes); and (2) additional elements that integrate the judicial exception into a practical application.

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See 2019 Guidance, 84 Fed. Reg. at 52, 54–55; *see also* MPEP §§ 2106.05(a)–(c), (e)–(h).³

Only if a claim (1) recites a judicial exception, and (2) does not integrate that exception into a practical application, does the Office then look to whether the claim: (a) adds a specific limitation beyond the judicial exception that are not “well-understood, routine, conventional” in the field (*see* MPEP § 2106.05(d)); or (b) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception. *See* 2019 Guidance, 84 Fed. Reg. at 56. We follow this guidance here.⁴

In reviewing the Examiner’s rejection under § 101, we group all the claims together and select claims 1 and 16 as representative. *See* 37 C.F.R. § 31.47(c)(1)(iv); Appeal Br. 18 (claims 1–15 and 16–25 “stand or fall together”), 20 (claim 1 is representative of claims 1–15), 26 (claim 16 is representative of claims 16–25). Appellant contends that claims 1 and 16 are representative of claims 1–15 and 16–25 respectively, each being directed to two different aspects of the “enhanced payment card account.” Appeal Br. 18. Appellant does not explain or discuss the alleged “two different aspects.” Most of claim 1’s limitations have corresponding

³ Unless otherwise specified herein, all references to the MPEP are to Rev. 08.2017 (Jan. 2018).

⁴ “All USPTO personnel are, as a matter of internal agency management, expected to follow the guidance.” 2019 Guidance, 51; *see also* October 2019 Update: Subject Matter Eligibility, 1 (Oct. 17, 2019) (“October 2019 Update”) (“Note, the feedback received was primarily directed to examination procedures and, accordingly, this update focuses on clarifying practice for patent examiners. However, all USPTO personnel are expected to follow the guidance.”), available at https://www.uspto.gov/sites/default/files/documents/peg_oct_2019_update.pdf.

limitations in claim 16. *See* CLAIMED SUBJECT MATTER above (reproducing claims 1 and 16). The only exception we note is that claim 16 lacks the “determining” a decision score is “below a risk threshold” step of claim 1. Accordingly, we use claim 1 as representative we refer to its claim language in our analysis.

B. APPLICATION OF LEGAL PRINCIPLES

1. Step 2A of 2019 Guidance

Prong 1: Claims Recite an Abstract Idea

The Examiner finds that the abstract idea is described in the Specification as “authoriz[ing] a transaction using a fraud risk indicator score (see page 6 lines 6–18) and to reimburse a fraudulent transaction loss using a fraud mitigation account.” Final Act. 16. The Examiner determines that the claim 1 recitation “*receiving transaction information and formulating a recommended decision score with respect to risk and transmitting an authorization message overruling an issuer decline, receiving a message indicating fraud and transmitting the instructions to reimburse a cost associated with a fraud transaction*” is also directed to the abstract idea. *Id.*; *see also id.* at 23 (“patent ineligible concept directed toward fundamental economic practices and concepts directed toward transaction authorization using risk mitigation processes.”).

Consistent with the Final Action, and applying the 2019 Guidance, the Answer quotes portions of claim 1, including “determining . . . that the recommended decision score is below a risk threshold . . . receiving . . . a fraud message indicating that the authorized purchase transaction . . . is fraudulent; . . . transmitting . . . instructions to transfer a monetary amount . . . to reimburse cost associated with the fraudulent transaction identified by the fraud message.” Ans. 3; *see also* Final Act. 16, 23 (cited in Appeal Br.

18 n.57). According to the Examiner, the preceding recitations “clearly state that the claimed subject matter is directed toward determining a threshold in order to authorize and fund a transaction.” *Id.* at 3–4. The recitations are determined to be a step that can be “performed in the mind” as a mental process of an abstract idea. *Id.* at 4. The Examiner also identifies other limitations of claim 1 that recite the abstract idea, including “transmitting an authorization message *overruling* a decline decision, receiving a fraud message . . . that the authorized purchase transaction . . . is fraudulent and transmitting . . . instructions to transfer monetary value from . . . [*fraud*] *expense pool* to . . . reimburse cost.” *Id.* at 4 (emphasis added).

We agree with the Examiner and determine the claim recitations of a payment card account where purchase transaction information and purchase history are used to overrule a decline determination and fund a transaction and, if the transaction is fraudulent, to reimburse the issuer financial institution (FI) recite steps that can be performed by a human by pen and paper as mental processes. We also agree with the Examiner that the above identified “overruling” and “fraud expense pool” limitations are part of the abstract idea.

Appellant disputes that claims 1–15 recite an abstract idea and alleges the claims are directed to “patent-eligible subject matter.” Appeal Br. 19. Appellant contends that the “overruling” and “fraud expense pool” recitations above, are not abstract. *See id.* at 20. We disagree.

The idea of “overruling a decline decision” is described as “overrule the issuer’s own initial decline decision.” Spec., 25:6–11. Stated differently, the authorization for a “purchase transaction” is changed from decline to approve.

Similarly, the fraud expense pool may be a general ledger and “may include financial data associated with funds that have been allocated to the benefits provider to cover costs, for example, of fraudulent activity and/or benefits servicing and/or statement credits and/or benefits reimbursements associated with enhanced payment card accounts.” Spec., 17:11–15. Thus, the “fraud expense pool,” like a general ledger, tracks allocation of funds to the issuer for potential reimbursement.

The 2019 Guidance requires us to identify at least one specific subject matter grouping within which the abstract idea fits. 2019 Guidance, 84 Fed. Reg. at 52. Appellant argues the preceding limitations of claim 1, “overruling the decline decision” and a “fraud expense pool” to reimburse costs to the issuing financial institution (FI) where the purchase transaction is indeed fraudulent, are not abstract but are patent eligible because they do not recite “a mathematical concept, certain methods of organizing human activity, or mental processes.” Appeal Br. 20–21.

Prior to applying the 2019 Guidance, the Examiner determined that the abstract idea was a “mitigation of risk in commerce” and thus “a fundamental economic practice.” Final Act. 16, 23. Applying the 2019 Guidance, in the Answer the Examiner further determines the abstract idea is a mental process in that the abstract idea “can be performed mentally and adding additional computer elements does not move the claimed process[] in the context of this claim beyond the user mentally/manually performing the claimed process.” Ans. 5.

Appellant argues the organizing human activity grouping includes “certain methods,” but not all methods. Reply Br. 2–3. Appellant concludes “that this category description does not cover human operation of machines.” *Id.* at 3. In a related argument, Appellant contends the claims

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recite “a fraud scoring platform that interacts with other hardware components” and is not “human activity.” *Id.* at 4. Appellant cites *Intellectual Ventures I LLC v. Capital One Bank*, 792 F.3d 1363 (Fed. Cir. 2015) as an example of “a concept relating to managing human behavior as being abstract.” *Id.* Appellant argues that the Examiner has not “analogized the claims at issue to other cases for guidance.” *Id.* We find these arguments unpersuasive.

We disagree that “human operation of machines” or that interaction of hardware components precludes a claim from reciting “organizing human activity.” This argument lacks legal authority. Indeed, as discussed in connection with Prong 2 below, simply using a computer to perform an abstract idea is not an additional element integrated into a practical application. 2019 Guidance, 55 n.30 (citing MPEP § 2106.05(f); *Alice*, 573 U.S. at 222–226). *Intellectual Ventures* is not relevant because it found the claimed subject matter *was an abstract idea*. Contrary to Appellant’s assertion, the Examiner cited case law for the determination that the abstract idea is a “fundamental economic practice,” which, under the 2019 Guidance, is one of certain methods of organizing human activity that have been deemed abstract (*see* 2019 Guidance, 52). Final Act. 16–17 (citing *Alice* (*see id.* 573 U.S. at 218–220) and *Bilski*).

We agree with the Examiner’s initial determination that the claims recite a certain method of organizing human activity. In this case the 2019 Guidance includes, as the Examiner determined, “fundamental economic . . . practices” including “insurance, mitigating risk.” 2019 Guidance, 84 Fed. Reg. at 52; Ans. 16–17.

Appellant recognizes the Answer categorizes the claims as reciting “mental processes” but argues such processes are “thus organizing human

activity.” Reply Br. 2 (citing Ans. [4]). Further, Appellant argues that the Examiner is “merely opining that claims 1–25 concern ‘mental concepts,’ and thus are within the realm of the ‘Certain Methods of Organizing Human Activity’ group of abstract ideas is not enough, and thus the Office failed to establish a *prima facie* case for rejecting the claims under Section 101.” *Id.* at 3. This argument is not persuasive.

Appellant misapprehends the Examiner’s grouping because “mental processes” are a separate grouping and not a subgroup of “certain methods of organizing human activity.” *See* 2019 Guidance, 84 Fed. Reg. at 52. The Examiner determines the claim recitations “can easily be performed mentally and/or manually . . . with pen and paper.” Ans. 4. This is more than merely opining that the claims recite a mental process. This determination is supported by the Specification, which does not describe any aspect of claim 1 which is anything other than a mental step. For example, the recited “determining . . . the recommended decision score is below a risk threshold” is described in the context of “a particular enhanced payment card account cardholder” and “could also include various other and/or additional risk factors that may increase or decrease the score.” Spec. 18:22–30.

We agree with the Examiner. The Specification describes how the determination of “risk threshold” is done. The determination step could be done by a person collecting the necessary information and calculating or otherwise mentally determining a fraud score. Other recited steps are likewise capable of being performed by a human. *See* Ans. 4 (listing other claim 1 steps as “easily be performed mentally and/or manually . . . with pen and paper.”).

We have also considered Appellant’s arguments regarding representative claim 16. *See* Appeal Br. 26–29 (concerning Step 2A, Prong

1). The Examiner determines, and we agree, the arguments made with respect to Prong 1 regarding claims 16–25 are repetitive of those made with respect to claims 1–15. Ans. 7. As discussed above, there is all but complete overlap between the limitations of claims 1 and 16. *See* Section I.A above. For example, both include “overruling the decline decision” and the “fraud expense pool” steps. *See* CLAIMED SUBJECT MATTER above (reproducing claims 1 and 16).

Thus, under Prong 1 of Step 2A in accordance with the 2019 Guidance, we agree with the Examiner’s determination that the claims recite a judicial exception to patentability, namely, “a method of organizing human activity” and a “mental process.” The claim limitations reciting the step of “overruling” a decision to decline or “a clearing and settlement system,” including a “fraud expense pool,” etc., are recitations of the abstract idea. We agree with the Examiner’s conclusion that the claims recite an abstract idea. Accordingly, in Prong 1 of the first step of the *Alice/Mayo* analysis, we conclude the claims recite an abstract idea.

Prong 2: Claims Integrate the Abstract
Idea Into a Practical Application⁵

In accordance with Prong 2 of Step 2A of the 2019 Guidance, we evaluate the claims to determine whether they recite *additional elements beyond the abstract idea*, and, if so, we evaluate the additional elements to determine whether they integrate the abstract idea into a practical application. 2019 Guidance, 84 Fed. Reg. at 54. The 2019 Guidance, at

⁵ We acknowledge that some of these considerations may be properly evaluated under the second part of the *Alice/Mayo* analysis (Step 2B of the 2019 Guidance). For purposes of maintaining consistent treatment within the Office, we evaluate them under the first part of the *Alice/Mayo* analysis (Step 2A of the 2019 Guidance). *See* 2019 Guidance, 84 Fed. Reg. at 54–55.

page 55, provides exemplary considerations, including whether an additional element:

- “reflects an improvement in the functioning of a computer, or an improvement to other technology or technical field”;
- “implements a judicial exception with, or uses a judicial exception in conjunction with, a particular machine or manufacture that is integral to the claim”;
- “effects a transformation or reduction of a particular article [or thing] to a different state or thing”; or
- “applies or uses the judicial exception in some other meaningful way beyond generally linking the use of the judicial exception to a particular technological environment.”

The 2019 Guidance also highlights certain examples in which courts have held that “a judicial exception has *not* been integrated into a practical application,” such as where the claimed invention “merely uses a computer as a tool to perform an abstract idea” or the additional element adds “insignificant extra-solution activity” to the abstract idea. 2019 Guidance, 84 Fed. Reg. at 55 (emphasis added); *see also* October 2019 Update at 11–15.

Appellant argues claims 1–15 “do not recite an abstract idea because the claims recite additional elements that integrate the exception into a practical application of that exception.” Appeal Br. 23 (emphasis omitted). Appellant argues additional elements of claims 1 and 12 (a system claim otherwise having limitations corresponding to claim 1’s steps):

recite an improvement to the functionality of a payment authorization platform by requiring interactions between a fraud scoring platform, a payment network, an issuer financial

institution (FI) computer, and a clearing and settlement system that interact in a manner to optimize authorization decisions for enhanced payment card accountholders in a manner to *minimize inconvenience and/or embarrassment*, while at the same time providing a process, which protects issuer FIs by transferring funds from a fraud expense pool to the issuer FI computer to cover authorized purchase transactions that later proved to be fraudulent.

Id. at 24; Reply Br. 5 (emphasis added). Appellant contends the above recitations, which are illustrative of the relevant claim limitations, “meaningfully limit the abstract idea.” Appeal Br. 24. These limitations are argued by Appellant as resulting in a “novel enhanced payment card account method and system.” *Id.* (referencing Section 103 rejections).

The Examiner contends the “improvement” is to “minimize inconvenience and/or embarrassment while providing a process which transfers funds from a fraud expense pool to the issuer to cover fraudulent transactions.” Ans. 6. The Examiner determines the preceding is “‘not directed to an improvement in the way computers operate’ and ‘the focus of the claims is not on . . . an improvement in computers as tools, but on certain independently abstract ideas that use computers as tools.’” *Id.* (citing *FairWarning IP, LLC v. Iatric Systems, Inc.*, 839 F.3d 1089, 1095 (Fed. Cir. 2016)). Further, the Examiner points out that any arguably technological element, like the “fraud scoring platform,” is a “generic element.” *Id.* at 7.

Appellant counters by arguing the process of claim 1 is “rooted in an electronic environment embodied by hardware components.” Reply Br. 3. Appellant points to the independent claims as requiring “a specific structure paired with a prescribed functionality that is directly related to the structure, and recite a method that resolves specifically identified problems.” *Id.* at 5.

Further, it argues none of the hardware functions is performed by a general purpose computer. *Id.* Appellant’s argument is not persuasive.

Other than by conclusory assertions set forth above, Appellant does not show why any of the recited hardware components use either “an improvement in the functioning of a computer, or an improvement to other technology or technical field,” as set forth in the 2019 Guidance, or meet any other consideration that might support a conclusion that the additional elements integrate the abstract idea into a practical application. The only arguable hardware components cited by Appellant are the “fraud scoring platform,” “payment network,” “issuer financial institution (FI) computer,” and “clearing and settlement system.” Appeal Br. 23–24; Reply Br. 5. But none of these additional elements is described as improving computer function or other technology.

For example, the “fraud scoring platform” is described functionally as evaluating “transactions based on established spending patterns for each primary account number (PAN) and then determines whether a particular purchase transaction is likely legitimate or fraudulent.” Spec. 17:2–5. The fraud scoring platform may make a decision based on limited data or with a “fraud algorithm that is/are not utilized and/or not available to the issuer FI computer.” *Id.* at 20:14–18. The fraud scoring platform is illustrated as a box, without any additional detail. *Id.* at Figs. 3, 4. The fraud algorithm is not disclosed.

The Specification does not disclose the fraud scoring platform as an improvement to computer technology. No technology is discussed in describing it or any of the other arguable hardware limitations claimed. Neither does Appellant identify any problem particular to computer technology that claim 1’s hardware components solve. *See, e.g., DDR*

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Holdings, LLC v. Hotels.com, L.P., 773 F.3d 1245, 1258 (Fed. Cir. 2014) (graphical user interface did not overcome any problem). Indeed, the alleged improvement of minimizing inconvenience and/or embarrassment associated with declining a credit card transaction is not a technological one. *See* Appeal Br. 24; Reply Br. 5.

Further, “transmitting by the fraud scoring platform . . . instructions to transfer a monetary amount from a fraud expense pool to the issuer FI computer to reimburse costs associated with the fraudulent purchase transaction” of claim 1 occurs after the transaction is confirmed as fraudulent. Reimbursement for the loss already incurred by erroneously authorizing the purchase transaction is a follow-up to the fraudulent purchase having been authorized. As such, this “additional element adds insignificant extra-solution activity to the judicial exception.” 2019 Guidance, 55.

Appellant makes substantially the same arguments for claims 1 and 16. We conclude, for the reasons outlined above, claims 1 and 16 recite a method of organizing human activity, a fundamental economic practice, and mental process that a human can perform under the 2019 Guidance, 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*, 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.’”) (second and third alterations in original) (quoting *Mayo*, 566 U.S. at 77). Accordingly, in the

first part of the *Alice/Mayo* analysis, we conclude claims 1 and 16 are directed to an abstract idea.

2. Step 2B of 2019 Guidance

Because we determine that the claims are directed to an abstract idea, and do not recite additional limitations that integrate the abstract idea into a practical application, we next consider whether the claims contain any “inventive concept” or adds anything “significantly more” to transform the abstract concept into a patent-eligible application. *Alice*, 573 U.S. at 216. As recognized by the Revised Guidance, an “inventive concept” under *Alice* step 2 can be evaluated based on whether an additional element or combination of elements:

- (1) adds a specific limitation or combination of limitations that are not well-understood, routine, conventional activity in the field, which is indicative that an inventive concept may be present; or
- (2) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception, which is indicative that an inventive concept may not be present.

See 2019 Guidance, 84 Fed. Reg. at 56; *see also* MPEP § 2106.05(d).

The Final Action determines that:

the claims recite at a high level generic functions such as receiving, formulating decision, determine a score threshold, transmitting an authorization message, receiving a fraud message and transmitting to fund a reimbursement cost which are processes capable of being performed mentally or implemented conventionally to perform the abstract idea.

Final Act. 18. The Examiner specifically determines the:

[fraud] scoring platform [is] recited at a high level of generality to simply perform generic computer functions such as receiving data, formulating a score, determining the score below a

threshold, transmitting an authorization based on the score, and receiving the authorization and transmitting funds in order to implement the abstract identified idea.

Id. The Examiner cites the Specification as demonstrating:

the well-understood, routine, conventional nature of additional elements when it describes the additional elements as well-understood or routine or conventional (or an equivalent term), as a commercially available product, or in a manner that indicates that the additional elements are sufficiently well-known that the specification does not need to describe the particulars of such additional elements to satisfy 35 U.S.C. § 112(a).

Id. at 19.

Appellant’s response is all but identical to its allegations regarding integration into a practical application. Appeal Br. 25. As was alleged in the practical application argument, Appellant, using language from the second step of *Alice*, alleges that “claims 1 and 12 provide meaningful limitations that add more than generally linking use of an abstract idea to generic computing devices.” *Id.*

In addition, Appellant argues the claims “include limitations other than what is well-understood, routine and conventional in the field, by requiring interaction between a *fraud scoring platform*, a *payment network*, an *issuer financial institution (FI) computer*.” Appeal Br. 25 (emphasis added). The same emphasized limitations were argued in connection with integration into a practical application argument. *Compare* Appeal Br. 24 with *id.* at 25. The adoption of relevant language from *Alice*, without further explanation, is not persuasive. For the reasons discussed above in connection with integration into a practical application, we determine that the elements Appellant cites, when considered individually and as an ordered combination, do not recite significantly more than the abstract idea

beyond generally linking the abstract idea to a generic technological environment.

Neither the “overruling” step nor the “fraud expense pool” step “focus on a specific means or method that improves the relevant technology” and are instead “directed to a result or effect that itself is the abstract idea.”

McRO, Inc., 837 F.3d at 1314. Both limitations recite parts of the abstract idea when considered “individually and ‘as an ordered combination’” and are not described in the Specification as additional elements that “‘transform the nature of the claim’ into a patent-eligible application.” *Alice*, 573 U.S. at 217.

Accordingly, we sustain the Examiner’s rejection of claim 1 under 35 U.S.C. § 101 as patent-ineligible. We also sustain the rejection of claim 16, which is argued on all but identical reasons. We also sustain the rejection of claims 2–15 and 17–25, which are not separately argued and, per Appellant, “stand and fall together” with claims 1 and 16. *See* Appeal Br. 18.

II. SECTION 103 REJECTIONS

We have reviewed the Examiner’s rejections of claims 1–25 under 35 U.S.C. § 103 in light of Appellant’s arguments the Examiner has erred. We disagree with Appellant’s arguments and we adopt as our own the findings and reasons set forth by the Examiner in the Final Action from which this appeal is taken and the reasons set forth by the Examiner in the Examiner’s Answer in response to Appellant’s Appeal Brief. We concur with the conclusions reached by the Examiner, and we highlight the following for emphasis.

A. REJECTIONS 2 and 4⁶ (Rejecting claims 1, 3–11, 12 and 15 over Bodington, Clarke, and Nighan)

Appellant states that claims 1, 3–11, 12, and 15 “stand or fall together.” Appeal Br. 34. Appellant’s arguments are limited to representative claim 1. *Id.* at 34–39.

Appellant first argues the references do not teach the recited “payment network” or an “associated decline decision.” Appeal Br. 35. Appellant alleges Bodington “describes a method wherein an accountholder 102 may create a routing rule for declining particular transactions.” *Id.* According to Appellant, the authorization process of Bodington is “distinctly different from a fraud scoring platform receiving purchase transaction information and an associated decline decision generated by an issuer financial institution (FI) computer from a payment network for a purchase transaction involving an enhanced payment card account, as claimed.” *Id.* at 36.

In response to Appellant’s assertion that Bodington does not teach a “payment network” and is “distinctly different” from the recited invention, the Examiner notes that Bodington specifically references “payment networks” including MasterCard, the real party in interest here. Ans. 11 (citing Bodington ¶ 24). The Examiner also cites Bodington’s “account features” as including “fraud features” to teach the payment network and fraud considerations in making a decision to decline authorization. *Id.* at 11–12 (quoting Bodington ¶ 59); *see also* Final Act. 44 (citing Bodington, Fig. 6A, ¶¶ 59, 111, 113 (“communicating risk score”), 143–144 (“a risk algorithm that calculates a risk value (e.g., a risk score)”). Appellant’s Reply Brief does not provide any additional argument as to what is present

⁶ Reference numbers are to rejections in REJECTIONS above.

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in its Appeal Brief in response to the Examiner's Answer. *See* Reply Br. 6–7.⁷ We agree with the Examiner's reasoning set forth above that Bodington shows a “payment network.” Final Act. 44 (citing *inter alia* Bodington Fig. 6A (selectable features of a debit account)).

Appellant acknowledges different routing rules of Bodington may result in the issuer declining an authorization requests for that debit account “if a condition of the routing rule is satisfied.” Appeal Br. 35–36 (citing Bodington ¶¶ 66, 77); *see also* Final Act. 44–45 (Examiner's citation to Bodington ¶¶ 66, 77 as part of evidence showing recitations to “fraud scoring platform,” “payment network,” “authorization”). Appellant and the Examiner both cite to paragraphs 66 and 77 of Bodington as teaching declining authorization requests. Appeal Br. 35–36 (citing Bodington ¶¶ 66, 77); *see also* Final Act. 44–45 (Examiner's citation to Bodington ¶¶ 66, 77). For these reasons, we are persuaded Bodington teaches a “decline decision.”

Appellant argues Clarke does not teach “overruling the decline decision received from the issuer FI computer.” Appeal Br. 37. Appellant argues Clarke teaches “rescuing transactions that do not include an issuer FI computer.” Appeal Br. 37 (citing Final Act. 45–46 (citing Clarke Figs. 1, 2, ¶¶ 35, 45, 54, 62)). Appellant argues the paragraphs of Clarke cited by the Examiner do not relate to “overruling a decline decision” of the “issuer FI computer” because the “transactions which were declined, canceled or

⁷ Appellant refers to certain disclosures of Clarke which are not relied on by the Examiner for the recited “decline decision.” *See* Reply Br. 7–8 (arguing Clarke's “credit limits” and “merchant banks” as different from the “decline decision as claimed”); *see also* Final Act. 44 (citing Bodington for the “decline decision”), 45–46 (Bodington does not teach “overruling the decline decision received from the issuer FI computer” and relying on Clarke). The “overruling” limitation is addressed below.

suspended by the merchant,” and “the merchant can initiate or not initiate a rescue process,” not the issuer FI computer. *Id.* The Examiner asserts a “merchant can also be an issuer” in that it can “reject” the transaction authorized by a FI such as taught by Bodington. Ans. 14–15 (citing Bodington ¶¶ 6, 27 (“gift cards”); Clarke, Fig. 1). The Examiner avers that gift cards are issued by merchants and in that instance acts as an issuer. *Id.* Appellant argues Clarke’s “credit limits” and “merchant banks” are different from the claim recitations. Reply Br. 7–8; *see* Clarke ¶¶ 5 (“The system or method can receive from the *merchant* (e.g., via the *merchant’s system*) data”), 37 (“the charge amount to be reserved/held from the *credit limit* associated with the electronic payment method”) (emphasis added).

Appellant’s arguments are not persuasive. Bodington, not Clarke, is cited for the FI limitation. *See* Final Act. 44. “[O]ne cannot show non-obviousness by attacking references individually where, as here, the rejections are based on combinations of references.” *In re Keller*, 642 F.2d 413, 426 (CCPA 1981). Further, the Specification explains “in some implementations the issuer FI may provide additional benefits . . . which are funded by the issuer FI *or other third parties, i.e., merchants* or manufacturers.” Spec. 13:21–24 (emphasis added). Thus, as the Examiner determined, a merchant can be an issuer. *See* Ans. 14–15.

The Examiner relies on Nighan to teach “wherein the fraud expense pool is funded by a portion of card products and services fees charged to issuer FIs that issue enhanced payment card accounts.” Final Act. 46–47 (citing Nighan, Figs. 3–4, ¶¶ 8, 14, 31, 34–37, 47 (“premium for the master policy as a benefit to the customer”), *id.* (citing Nighan ¶ 36 (“a master policy approach, covering all remote banking customers against loss resulting from unauthorized transactions”)). Appellant argues Nighan

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provides insurance to a consumer, and not to the “issuer FI computer.”

Appeal Br. 38–39. The Examiner responds that Nighan insures, for example, “loss incurred in connection with an online financial transaction.”

Ans. 16 (quoting Nighan ¶ 14), *id.* at 16–17 (citing Nighan ¶¶ 14, 31, 34–37). Appellant does not respond to this showing. *See generally* Reply Br. 6–8. We are not persuaded by Appellant’s argument.

Claim 1 broadly specifies that the FI computer, as taught by Bodington, is to “reimburse costs associated with the fraudulent purchase transaction.” The “purchase transaction” to be reimbursed can be related to a consumer. *See* Spec. 17:22–29 (“enhanced payment card account . . . provide enhanced benefits provisioning to a consumer’s enhanced payment card account, and to facilitate clearing and settlement between one or more financial institutions (such as acquirer banks and issuer banks)”).

B. REJECTIONS 3 and 5 (Rejecting claims 2 and 13 over Bodington, Clarke, Nighan, and Langus)

Claim 2 is taken as exemplary of claims 2 and 13, which “stand and fall together.” Appeal Br. 39. Claim 2 depends from claim 1 and recites “further comprises transmitting, by the fraud scoring platform, a copy of the purchase transaction authorization message via the payment network to the issuer FI computer to notify the issuer FI of the decision to overrule the decline decision.”

The Examiner relies on Langus for the limitation recited in claim 2. Final Act. 52–52 (citing Langus, Fig. 7, ¶¶ 45–49); Ans. 18 (quoting Langus ¶ 46). Appellant argues nothing cited by the Examiner in Langus suggests the subject matter, including the “transmitting . . . the transaction authorization message,” of claim 2. Appeal Br. 40. Appellant argues “paragraphs 0045–0049 disclose a mobile companion prepaid card clearing

process, a cardholder dispute process, a companion prepaid card settlement process, a payment card system, and a mobile companion prepaid card mobile-centric SMS confirmation process, respectively.” *Id.* Appellant does not respond to the quotation from paragraph 46 of Langus quoted in the Answer. *See generally* Reply Br. 6–8. We are not persuaded by Appellant’s argument.

None of the differences cited by Appellant are distinguishable from the broadest reasonable interpretations of the recitations of claim 2. As part of the cardholder dispute process for receiving a “charge-back” for a disputed transaction, paragraph 46 of Langus teaches the merchant “*transmits the documentary evidence* (such as a copy of the sales receipt) to the Acquirer 808, which is propagated through the payment card system 806.” Emphasis added. We are not persuaded that transmitting the “documentary evidence” of paragraph 46 is patentably distinct from the recited “transmitting . . . the purchase transaction authorization message.” Appellant does not argue, and has not otherwise shown, that transmitting a document as part of a dispute process is different from transmitting the “purchase authorization message” in connection with reimbursement for a “fraudulent purchase transaction.” The documentation of Langus is also “propagated through the payment card system,” which we find is “via the payment network.”

C. REJECTION 6 (Rejecting claim 14 over Bodington, Clarke, Nighan, and Hillmer)

Claim 14 depends from claim 12 and further recites “determine that the recommended decision score is above the risk threshold, and then to transmit a purchase transaction decline message to the payment network on behalf of the issuer FI computer.” The Examiner determines that Hillmer

teaches determining whether a decision score is above a threshold. Final Act. 60 (citing Hillmer, Abstract, ¶¶ 41, 44, 8–9, 31–32, 47–48, 58); Ans. 19 (citing Hillmer ¶¶ 47, 39, 146). Appellant argues “the cited portions of Hillmer do not even suggest transmitting a purchase transaction decline message to the payment network on behalf of the issuer FI computer, as claimed.” Appeal Br. 40. We are not persuaded by Appellant’s argument.

The portions of Hillmer cited by the Examiner include a “total fraud score” which is “*compared with a fraud score threshold.*” Hillmer ¶ 47 (emphasis added). Hillmer also teaches a “determination that the account has sufficient funds to cover payment for the resources being purchased or that the transaction has a low risk of fraud.” *Id.* ¶ 39. As recognized in the Specification, a sufficient funds determination is a risk threshold determination resulting in reimbursement. Spec. 27:14:20. As far as a “purchase decline message,” Hillmer teaches an “authorization response [which] may include an authorization of the payment transaction or a decline to authorize the payment transaction.” Hillmer ¶ 39. Appellant’s argument merely denies the teachings of Hillmer, but also agrees that Hillmer teaches “the transaction is indicated to be potentially fraudulent if the fraud score *exceeds a first pre-determined threshold.*” Appeal Br. 41 (citing Hillmer ¶¶ 8–9) (emphasis added).

D. REJECTIONS 7 and 9 (Rejecting claims 16–20, 22, 23, and 25 over Bodington, Clarke, and Nighan)

Claim 16 recites substantially the same subject matter as recited in claim 1. Appellant makes the same arguments it made in connection with claim 1 in Section A above. Appeal Br. 41–47; *see also* Ans. 20–22 (“See response above,” referencing arguments previously made arguments). We

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refer to our analysis above in Section A in response to these arguments.
Appellant's arguments remain unpersuasive.

Claims 17–20, 22, 23, and 25 are not separately argued. *See generally* Appeal Br. 41–47. Any arguments that could have been made relating to their separate patentability are therefore waived. *See* 37 C.F.R. § 41.37(c)(iv).

E. REJECTIONS 8 and 10 (Rejecting claims 21 and 24 over Bodington, Clarke, Nighan, and Hillmer)

With respect to claims 21 and 24, Appellant makes the same arguments it made in connection with claims 2 and 13 in Section B above. Appeal Br. 47–48. Other than dependency relationships, claims 2, 13, 21, and 24 all recite all but identical subject matter. We refer to our analysis above in Section B and our analysis of claim 2 in response to these arguments. Appellant's arguments remain unpersuasive.

CONCLUSION

The Examiner's decision rejecting claims 1–5 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter is affirmed.

The Examiner's decision rejecting claims 1–25 as being unpatentable under 35 U.S.C. § 103 is affirmed.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–25	101	Eligibility	1–25	
1, 3–11	103	Bodington, Clark, Nighan	1, 3–11	

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2	103	Bodington, Clarke, Nighan, Langus	2	
12, 15	103	Bodington, Clarke, Nighan	12, 15	
13	103	Bodington, Clarke, Nighan, Langus	13	
14	103	Bodington, Clarke, Nighan, Hillmer	14	
16–20, 22	103	Bodington, Clarke, Nighan	16–20, 22	
21	103	Bodington, Clarke, Nighan, Hillmer	21	
23, 25	103	Bodington, Clarke, Nighan	23, 25	
24	103	Bodington, Clarke, Nighan, Hillmer	24	
Overall Outcome			1–25	

TIME PERIOD FOR RESPONSE

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